

EXHIBIT 1

Glen Joerger - May 23, 2012

1

1 UNITED STATES DISTRICT COURT
2 CENTRAL DISTRICT OF CALIFORNIA
3 WESTERN DIVISION

4 - - - - - x
5 GLOBAL BTG LLC, :
6 Plaintiff, :
7 vs. : Case No.
8 NATIONAL AIR CARGO, INC, : 2:11-CV-01657-RS WL-JCGX
9 Defendant/ :
10 Counterclaim Plaintiff, :
11 vs. :
12 GLOBAL BTG LLC, :
13 JACOB HODGES and DOES 1-5, :
14 Counterclaim Defendants.:
15 - - - - - x
16 Washington, D.C.
17 Wednesday, May 23, 2012

Certified Copy

18 Videotaped Deposition of NATIONAL AIR
19 CARGO, INC., through its representative, GLEN JOERGER,
20 and GLEN JOERGER individually, a witness herein,
21 called for examination by counsel for Plaintiff in the
22 above-entitled matter, pursuant to notice, the witness
 being duly sworn by KAREN YOUNG, a Notary Public in
 and for the District of Columbia, taken at the offices
 of Perkins Coie LLP, 700 Thirteenth Street, Northwest,
 Washington, D.C., at 9:02 a.m. on Wednesday, May 23,
 2012, and the proceedings being taken down by
 stenotype and transcribed by KAREN YOUNG.

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1 document's an e-mail from Mr. Alf dated March 10th,
2 2010.

3 (Exhibit 78
4 was marked for
5 identification.)

6 BY MR. KULA:

7 Q. So that's Exhibit 78? Mr. Joerger, I'm
8 just going to ask you about the cover e-mail, but you
9 can take a look at that document if you want to
10 familiarize yourself with it just so you know what I'm
11 asking about. The date on this document is March
12 10th, 2010, and actually, let me back up. At some
13 point did you become directly employed by National?

14 A. Yes.

15 Q. When was that?

16 A. April of last year as an employee.

17 Q. So April of --

18 A. 2010.

19 Q. '11?

20 A. April 2011 as an employee. I was a board
21 member since January of 2010.

22 Q. Okay, so in March of 2010, you were a board

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1 member of National.

2 A. That is correct.

3 Q. In this e-mail, it says we are looking for
4 three or four -- three to four 747-400. Do you recall
5 this period in the spring of 2010, the company was
6 looking to acquire 747 aircraft?

7 A. I do not remember this particular one. I
8 remember the JAL deal, but yes, I remember this one,
9 2010. I was thinking 2011. Yes, in March 2010, yes,
10 we were looking at the JAL airplanes.

11 Q. Yeah, and I'm not necessarily asking you to
12 remember this e-mail. I'm just using it more to set
13 the optic, which is in the spring of 2010, was the
14 company looking to expand its fleet of aircraft?

15 A. Yes.

16 Q. And why was that?

17 A. We were actually looking to modernize. At
18 the time, the company had a fleet of DC-8s, a small
19 fleet of DC-8s. The DC-8 is a very fuel-inefficient
20 aircraft carrying about 45 tons. It is not well
21 suited for the military market and it's not very well
22 suited for the commercial market except in very niche

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1 opportunities. The government had in late 2009, early
2 2010 come to the Civil Reserve Air Fleet carriers and
3 said we want you to modernize your fleets, as part of
4 this came from -- from language in the National
5 Defense Authorization Act from Congress saying that
6 they thought that the military should provide
7 incentives for the commercial carriers to modernize
8 their fleets. In response, we had multiple
9 discussions inside the company on how we could now
10 change our -- our airline to respond to this and to
11 modernize.

12 We looked at DC-10s. At one point we were
13 considering DC-10s. We eventually settled on the
14 747-400 as the best aircraft to move forward to with
15 to both respond to being better well competitively
16 positioned in the commercial market, and to service
17 our military customers.

18 Q. Was there some process that the company
19 went through to determine how many aircraft it would
20 seek to acquire at that time?

21 A. There was an analysis to say what would be
22 the optimum number. If you could just pick a number,

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1 what's the optimum based on the rules that were going
2 to be proposed to be implemented under the Civil
3 Reserve Air Fleet program, under those new rules, what
4 would be the optimum number.

5 Q. And what answer did the company come up
6 with?

7 A. Eight.

8 Q. And let me back up again. So you were a
9 board member at this time in the spring of 2010.
10 That's where I'm focused on. Did you have a role in
11 this process the company went through to determine
12 whether to expand its fleet of aircraft, and if so,
13 what type of aircraft and how many?

14 A. Yes, I was still a consultant with the
15 company as well as a board member.

16 Q. What was your role in that regard?

17 A. I was a key advisor in the whole process as
18 well as, as a board member, part of the decision
19 authority.

20 Q. Was some report made up at some point
21 indicating the conclusion as to what direction the
22 company should go?

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1 Q. Well, you --

2 A. You show me a term sheet.

3 Q. He brought you Global, right, Mr. Stukes?

4 A. Yeah, and Global made promises they
5 couldn't keep and Global could not ever provide a term
6 sheet. Global is a broker. They're not a lender, and
7 they were never able to meet the requirement. They
8 never provided us a term sheet.

9 Q. My only point is that there were certain
10 terms that were -- in the Global offer, correct?

11 A. There was never a firm commitment letter
12 from a lender out of Global, never. There was a
13 broker offering -- and that's why we were very
14 skeptical, because we like to deal with lenders. So I
15 can deal with anybody off the street that says I'm a
16 company and I'm going to try and go out and do this
17 for, which is kind of nice, but if you don't have
18 money, if you don't have a commitment letter from a
19 lender who has money, that's not a firm commitment
20 letter. That's why you don't -- these people on this
21 letter, they have money. They're people that actually
22 can lend. Please don't put Global in the same

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1 2010. As of that point, that time, do you recall if
2 you'd communicated to Mr. Stukes that there was some
3 -- I'm not suggesting these exact words, but some
4 drop-dead date by which financing or a commitment for
5 financing was needed?

6 A. At this point we were not communicating a
7 date other than we had to have them for the closing of
8 the airplanes, so that was -- the date we were all
9 working to was the closing of the airplanes, but we
10 are quickly drawing upon, and I don't know the exact
11 meeting of Mr. Murray in Japan, but when Mr. Murray
12 came back from Japan meeting with the JAL trustee is
13 when we knew that we had to have a firm commitment
14 letter and we had a new -- new prospective deadline
15 coming in.

16 Q. Do you recall in regard to document, the
17 attachment to the June 19th e-mail, discussing with
18 Mr. Stukes what he references on the last -- last page
19 as Pearl Aviation, in that paragraph?

20 A. I remember having a lot of discussions
21 about Pearl Aviation, yes.

22 Q. Do you recall the first discussion you had

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1 with Mr. Stukes about it?

2 A. I do not recall specifically the date and
3 time of the first discussion.

4 Q. Do you -- you mentioned a lot of
5 discussions. Do they all run together or can you in
6 your mind differentiate specific discussions with Mr.
7 Stukes about Pearl?

8 A. They become much more specific as we get
9 closer into July. Initially he's out here with a very
10 broad pool and so he's got a lot of people he's
11 throwing at, and then as he refines that list, then
12 the specificity of the discussions increases with the
13 probability of he thinking the probability of success
14 is higher.

15 Q. Now, this document says Pearl Aviation. At
16 some point in time, did what is referenced here as,
17 you know, potential financing through Pearl Aviation,
18 did in your mind the name change to Global at some
19 point? In other words, start referring to it as
20 Global instead of Pearl?

21 A. No, we actually thought Pearl Aviation was
22 kind of involved in the whole thing and we thought

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1 Global was an entity that involved both Pearl Aviation
2 and GreenRock, so we were very shocked to find out
3 later that Mr. Hodges had no affiliation with Pearl
4 Aviation, and in essence, this was some other company
5 that may or may not have existed, so we were as
6 shocked as you are.

7 Q. Well, what discussion do you recall with
8 Mr. Stukes about -- in which he discussed Mr. Hodges'
9 affiliation with Pearl?

10 A. Mr. Stukes says that Hodges was affiliated
11 with Pearl, that they did have experience doing this
12 and that they were interested in doing this deal.

13 Q. Was that in the first discussion you had
14 with him with -- the name Pearl came up?

15 A. Yes.

16 Q. And had you ever heard of Pearl Aviation?

17 A. I hadn't heard of several of these people,
18 so again, this is not something -- I had heard of
19 Goldman Sachs, I had heard of DB Bank, I'd heard of
20 Credit Suisse, but -- I'd heard of Guggenheim. I'd
21 not heard of Nord LB. So some of these people I had.
22 I'd heard of Citibank. ComVest Debt Fund I had not.

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1 So some I'd heard of and some I had not. Pearl
2 Aviation was one that I had not.

3 Q. In that first discussion, the first time
4 you recall there being a discussion, did Mr. Hodges'
5 name come up, individual name?

6 A. I'm not sure if it was the first, but it
7 was very in the early stages that he associated Mr.
8 Hodges with Pearl Aviation.

9 Q. He being Mr. Stukes?

10 A. Yes, sir.

11 Q. And what did Mr. Stukes say about Mr.
12 Hodges the best you can recall the first time it came
13 up or the first you can recall?

14 A. That Pearl Aviation was very interested in
15 doing this and that they wanted to propose some
16 solutions. He kept saying they can do this very
17 quickly, they can do this very quickly, they've got
18 folks, I know we can make this happen, you know, they
19 -- they have an ability to do this very fast. So this
20 was the initial promise, why Pearl started to rise
21 faster was because of the promises that they can do
22 this very quickly.

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1 name came up the first time that Pearl was mentioned
2 by Mr. Stukes? Did I recall that?

3 A. I think Pearl came up in some earlier
4 documents before Jacob Hodges is mentioned, and then
5 shortly thereafter, he was connected with Pearl
6 Aviation.

7 Q. So whether we're using the term "Pearl" or
8 "Hodges," this is -- you understand that to be the
9 same potential source of financing, the same potential
10 deal.

11 A. I understood that Pearl Aviation was
12 providing funding.

13 Q. And that Jacob Hodges was a principal
14 there?

15 A. I understood that Jacob Hodges worked for
16 Pearl Aviation and he was their point of contact in
17 doing the due diligence on this deal.

18 Q. And that information came from Mr. Stukes?

19 A. Yes, sir.

20 Q. Now, did Mr. Stukes ever tell you that Mr.
21 Hodges actually is not with Pearl Aviation?

22 A. He did at some point, but I can't tell you

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1 exactly what that point was, and I believe it was
2 after -- actually after we terminated.

3 Q. Well, we'll go through some documents.

4 A. So when you say ever, ever's a long period
5 of time, and so now you run that scope from June 'til
6 present, and -- and so from the time I first heard the
7 words "Pearl Aviation" and "Jacob Hodges," did Don
8 Stukes ever tell me that Jacob doesn't work for Pearl
9 Aviation, yes, I believe in some time in that period
10 of time from June from this e-mail until today, yes,
11 he did.

12 Q. Okay, and I'm not testing your memory
13 because we'll get to it, but just so I have an
14 understand of what -- what -- what your recollection
15 is, did not National enter into an LOI with Global, a
16 company called Global?

17 A. We're not really sure who we entered into
18 an LOI with. We were under the impression that it was
19 Pearl. We were then under the impression that
20 GreenRock was involved. We were then under the
21 impression that BTG was some conglomeration of Pearl
22 and GreenRock. So only after the fact did I ever

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1 realize that I really was never exactly sure in that I
2 was made to believe that I was doing business with
3 some people that I wasn't really doing business with.
4 So when I went to Pearl Aviation's web site and I
5 looked, I couldn't find Jacob Hodges but -- so I
6 figured he was not a principal, he was somewhere lower
7 in the organization. And if I go on Pearl Aviation
8 today, I can't find Jacob Hodges, and if I went
9 looking for BTG's web site and finding Jacob Hodges, I
10 couldn't find that either.

11 Q. Did you do that?

12 A. Looked for it, wasn't there.

13 Q. But my -- my question was simpler. Just
14 there was a written LOI that was signed by National
15 and some other party that I believe is Global. As you
16 sit here --

17 A. It was signed by two other parties, Global,
18 LLC and Global, Inc., so which one are you referring
19 to?

20 Q. So the name "Global" was on that agreement,
21 correct, not Pearl?

22 A. Global Aviation Holdings, who owns World

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1 and North American, but that's not who I was referring
2 to. So there's a lot of aviation companies called
3 Global. Which one are you referring to? I don't
4 know. That was the problem is we didn't really -- we
5 thought that this Global was part of GreenRock and
6 Pearl and some conglomeration because up until the
7 very last days, we're talking to Pearl we think the
8 whole time. And suddenly we're talking to GreenRock,
9 and then we're suddenly see on an LOI, not the first
10 edition, a later edition of an LOI, we suddenly see
11 this Global, and then we see Global, LLC and we see
12 Global, Inc.

13 Q. Okay. Do you recall that through this
14 process leading up to this LOI, that at some point the
15 name "Pearl" stopped appearing on documents, whether
16 it's e-mails or other communications or actual LOI
17 drafts, and "Global" appeared as opposed to Pearl? Do
18 you recall that?

19 MR. RICHMOND: I'll object to the extent
20 your description of appeared on documents is too vague
21 and ambiguous for what I think you're -- you mean,
22 because I've seen the name on documents right until

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1 same thing essentially, saying he could not get a
2 commitment letter today, he'll try to get a letter
3 stating an institution's interested in funding the
4 deal. Do you recall having a discussion with him on
5 that?

6 A. Yeah, Mr. Stukes would generally provide
7 other options, is this going to work, is that going to
8 work. In the end, it was we need a financing lease,
9 we need a firm commitment letter from an institution
10 that has funds. Would Mr. Stukes offer various
11 alternatives and various suggestions, yes, he would.

12 Q. Okay, at this point National was unable to
13 get such a letter from Deutsche Bank, correct?

14 A. That's correct.

15 Q. And Mr. Stukes is saying here that Goldman
16 or GECAS or Nord LB, will not come from them, correct?

17 A. In this particular time frame, that is
18 correct, that's what he stated.

19 Q. So come from a different source he says by
20 doing a favor. Did he ever explain to you what he
21 meant by that, doing a favor? Did he ever use that on
22 the phone, that term, doing a favor? No?

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1 A. Not to me.

2 Q. You're shaking your head.

3 A. I'm sorry, I apologize. No, sir, not to
4 me.

5 Q. And it says, "So if you can hold off JAL
6 until late today or early Monday." Do you understand
7 what he means by that, hold off JAL?

8 A. He knows that we have -- that JAL is
9 pushing hard to get some commitments.

10 Q. And do you recall if after this, after this
11 e-mail sometime, this says Friday June 25th, if he was
12 able to get -- and I'm talking, say, in the next week
13 or so, get a letter stating an institution's
14 interested in funding the deal?

15 A. Best of my knowledge, no. That's why we
16 came upon -- eventually we came upon that Thursday
17 July 22nd deadline. You're seeing all the -- the
18 actions leading up to eventually JAL having a -- what
19 they -- we believed to be a firm deadline that we had
20 to have a commitment letter for a meeting that happens
21 just after that Thursday July 22nd deadline, and so
22 Mr. Alf and I were going to have to go to Japan, so

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1 this is all leading up to that.

2 Q. Was there -- was there an earlier JAL
3 deadline that this is referring to, because it says
4 hold off JAL until late today or early Monday, and
5 this is dated June 25th.

6 A. There was significant JAL pressure. Using
7 the word "deadline," I don't recall an exact if you
8 don't have by this date, until the line -- the meeting
9 that we were going to go to would have been in the
10 July 25th, 26th time frame in Japan is where we got
11 the impression that this is go-no go.

12 Q. Was that meeting already set, that is, of
13 this June 25th time frame?

14 A. No, at this point they're just putting a
15 lot of pressure.

16 Q. Would you say it's just general pressure to
17 get something without any specific date stated?

18 A. Yes, sir. It eventually comes to a date
19 when we're not producing that letter.

20 MR. KULA: Okay, let's mark a series of
21 e-mails again, NAC006747, first one is -- goes
22 through, I should say, NAC006756, goes through -- or

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1 it's dated June 28th, 2010 from Mr. Stukes to Mr. Alf,
2 Mr. Joerger and others, and that's 96.

3 (Exhibit 96
4 was marked for
5 identification.)

6 BY MR. KULA:

7 Q. See this is an e-mail chain, if you will, a
8 couple e-mails from Mr. Stukes. If you look -- if you
9 go from the back to the front sort of, actually,
10 starting at NAC006751, I need to ask you about that.

11 A. Okay.

12 Q. In this time frame, do you recall getting
13 some feedback from Mr. Stukes that some of the lenders
14 were -- at least had questions if not getting
15 push-back based on what he refers to in this one
16 e-mail is a legal issue with the government?

17 A. Yes.

18 Q. Did he ever express to you that there were
19 potential lenders who just weren't interested in doing
20 anything with the company because of that?

21 A. He said that there could be an issue with
22 lenders.

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1 BY MR. KULA:

2 Q. The e-mail says, I just got a from proposal
3 from -- or I just got a GS proposal. Did you
4 understand that to be a proposal from Goldman Sachs?

5 A. Yes, sir.

6 Q. And then there's a draft letter attached.
7 Is -- did -- this July 6th proposal from Goldman
8 Sachs, that was not accepted by National; is that
9 correct?

10 A. It wasn't accepted by National on July 6th.

11 Q. And why not was it acceptable at that time?

12 A. Because we had concerns with the fee
13 structure.

14 Q. It was too expensive?

15 A. Yes, sir.

16 Q. And you told that to Goldman Sachs?

17 A. Yes, sir.

18 Q. If you look at their draft letter, first
19 page, second paragraph says, "The exclusive right to
20 act." Did you understand that Goldman was asking to
21 be the exclusive -- have an exclusive relative to
22 providing financing?

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1 A. We understood that they were asking for
2 that, yes.

3 Q. And then the second, or third paragraph
4 there actually ending the first page, it says, "In the
5 event the company does not complete the financing
6 within six months from the date, the company would
7 reimburse Goldman Sachs for its reasonable
8 out-of-pocket expenses, including the fees and
9 reimbursement of its attorneys incurred in connection
10 with the proposed financing." Was that another reason
11 that this was rejected at that time?

12 A. We didn't go by through a detail by detail.
13 We in hand rejected it at a macro level at the time.
14 We set it to the side because we were getting a lot of
15 promises by Pearl saying that they can make this
16 happen very quickly and with a fee structure that we
17 potentially believed was lower, but we kept waiting
18 for an actual terms to see what the terms would be.
19 So this was set to the side while we tried to find out
20 if the promises that we were receiving were true and
21 what the actual details were with these promises.

22 Q. Okay, as of this time, its says July 6th on

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1 this, what do you recall -- what promises do you
2 recall Pearl -- Pearl or Mr. Hodges would have made?

3 A. They can make this happen, they can get it
4 done, we've got a lot of soft commitments, we can --
5 we still want to do operating leases but we can do
6 finance leases, we can make it happen.

7 Q. Do you recall hearing that in a specific
8 call with -- when Mr. Hodges said that or is that
9 coming from Mr. Stukes?

10 A. It came from in Mr. Stukes early, but then
11 we did clearly hear that from Mr. Hodges on the
12 Wednesday phone call of Wednesday July 14th I believe.

13 Q. Okay, so the exhibit we were just
14 referencing, 99, that's dated July 6th, so -- and you
15 just referenced a call of July 14th.

16 A. I referenced two things. I said Mr. Stukes
17 was telling us previous to that, which would have been
18 this time frame, and then I referenced that Mr. Hodges
19 specifically said on July 14th, so I was representing
20 this time frame and from Mr. Hodges on the 14th. I
21 was trying to be specific.

22 Q. Right, and I'm just talking now about up to

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1 July 6th. July 6th.

2 A. Okay.

3 Q. Do you recall having any specific
4 conversation with Mr. Hodges where he made any
5 promises?

6 A. No.

7 Q. And what --

8 A. That I remember.

9 Q. What was Mr. Stukes telling you at that
10 time if you recall as to what Mr. Hodges was promising
11 or suggesting he could do?

12 A. Mr. Stukes was saying Pearl could do this,
13 they can make it happen fast, they've got a lot of
14 soft commitments, they want to do this.

15 Q. When you say do this, what do you mean?

16 A. Get us financing for the aircraft, 12
17 aircraft.

18 Q. And did you know what terms they were
19 speaking of?

20 A. No, we didn't, but I was going to finish.
21 Not 12. It could have been as little as eight,
22 because we were kind of segregating the 747s from the

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1 -- from the 75s.

2 Q. So based on the promises you -- well, let
3 me just put it this way. Based on what you were
4 hearing from Mr. Stukes, okay, as of July 6th, and not
5 knowing what the terms were, that is part of the
6 reason you put aside Goldman's offer from July 6th?

7 A. Because we kept hearing you're going to see
8 average LOI any day, any day, any day, so it's kind of
9 this, you know, I'm hoping that I'll see it on July
10 7th. I hope -- oh, no, no, you'll see it any day,
11 July 8th. And so you keep waiting for you're about to
12 see this term sheet so you can make an educated
13 analysis of what option is best. The problem becomes
14 when people are promising you they're going to get you
15 something and then they don't, they create this thing
16 where you start pushing a decision down the road where
17 you -- with the sense of urgency and time is of the
18 essence, you'd much rather have that decision made up
19 front. So that's why we're continually pressing, and
20 you'll see throughout the documents, to get
21 commitments, to get term sheets, to get LOIs and get
22 them in so we can make an analysis. We're getting a

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1 We didn't need promises from folks. We needed actual
2 term sheets so we can evaluate them.

3 Q. Do you recall anything in writing going
4 back saying you don't want anything with an operating
5 lease in response to this chain of e-mails?

6 A. I remember getting an LOI from Pearl where
7 I red-lined out the entire operating lease languages,
8 and then multiple times both verbally and in writing
9 said no operating lease. I don't know how much more
10 clear I can be by stripping out the entirety of every
11 single word that contains operating lease language in
12 it. To me, that clearly represents that I clearly
13 communicated that there was no operating leases to Mr.
14 Stukes, Mr. Hodges, Pearl, GreenRock, BTG and anyone
15 else involved.

16 Q. Well, based on Mr. Stukes' response that
17 you're copied on, does it appear that he doesn't
18 understand that -- that National does not want
19 operating leases?

20 A. It appears that he's trying to make a deal
21 happen.

22 MR. KULA: Okay, let's go off the record.

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1 We need to change the tape.

2 THE VIDEOGRAPHER: This is the end of Tape
3 4 in the videotaped deposition of Glen Joerger. We
4 are off the record at 3:49.

5 (Recessed at 3:49 p.m.)

6 (Reconvened at 3:58 p.m.)

7 THE VIDEOGRAPHER: Here begins Tape 5 in
8 the videotaped deposition of Glen Joerger. We are
9 back on the record at 3:58.

10 MR. RICHMOND: Counsel, I just want to note
11 for the record we showed up seven hours ago. We took
12 a one hour lunch break. You've asked for all the
13 other breaks and we haven't, so I would encourage you
14 to move right along here.

15 MR. KULA: I'll just note, I haven't asked
16 for a break so much as the videographer needs breaks
17 to change the film, so if I've asked to go off the
18 record, that's been the reason.

19 BY MR. KULA:

20 Q. Do you recall, Mr. Joerger, having a
21 conference call involving Jacob Hodges before
22 receiving another version of the LOI, an LOI from him

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1 or Pearl or anybody else that you affiliate with him?

2 A. Yes, sir, I believe you're referring to the
3 conference call we had on Wednesday July the 14th.

4 Q. Okay. What was said in that call?

5 A. This is the first time that we now meet
6 GreenRock, and we talk to Steve Alexander and Rick
7 Jones and they start telling us what they collectively
8 can do. We talk about how we don't want operating
9 leases, we want only finance leases, time is of the
10 essence, we have to get a letter. We needed several
11 things from them. One, no operating lease. Two, we
12 have a JAL deal, we have to go back to Japan and we
13 have to explain to the bankruptcy trustee that we have
14 a firm commitment letter.

15 They tell us that they have soft
16 commitments, but they need a document so that they can
17 go to these institutions and firm up these soft
18 commitments that they have, and so we're talking about
19 okay, if you get this letter, then you can go up and
20 you can get firm commitment letters by next week, and
21 they're saying yes, if you give us the letter, we'll
22 go to the institutions and we'll get a firm commitment

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1 letter.

2 Now, we get into discussions later on after
3 this conference when we actually start putting it in
4 writing, then we start, you know, well, maybe, we
5 start pausing and hemming and hawing, and so we
6 eventually get to the language that we get to, but we
7 clearly communicate what we need, which is a letter
8 from an institution that says that they can provide us
9 financing for the JAL aircraft.

10 Q. What do you recall Mr. Hodges saying in
11 response to needing a letter from an institution?

12 A. There was -- initially on the Wednesday, it
13 was a more positive call, and that was -- part of the
14 thing is we would seem to make advances on the calls,
15 and then we would seem to come off a call and we'd
16 seem to fall back, and then so each time it got a
17 little frustrating is that we'd have call, we'd think
18 we all understand each other. We come off the call,
19 Mr. Stukes would talk to Mr. Hodges. Mr. Stukes
20 report back and suddenly what we thought we had heard
21 evidently is not what we had heard, and so that's why
22 we have these series of calls, because we were getting

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1 -- we didn't understand how -- why what we were
2 explaining on calls wasn't sinking in, although we
3 clearly on the call thought it was sinking in, but
4 wasn't.

5 Q. What did you think you were hearing
6 directly from Mr. Hodges? What do you recall him
7 saying?

8 A. Initially he was communicating that they
9 wanted operating leases, they could do a combination
10 thereof, but when we pushed back on operating leases,
11 yes, we can get you finance leases. It's going to
12 take a little bit of time. Can you do it by next
13 week? We have soft commitments, we'll -- if you give
14 us a letter, we'll try to make those more firm. Yes.
15 We can do it by -- by next week. You just need to
16 give us the letter. We can't go to the markets. The
17 markets won't talk to us and firm anything up unless
18 they know that we're representing you. There's other
19 people out there talking because people know that
20 we're talking to Deutsche Bank and Goldman, so we need
21 this letter from you so people know that we have
22 credibility to go out there and talk to them to firm

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1 this up.

2 Q. Well, did he say that he would -- if he did
3 that, he would be able to produce a firm commitment
4 letter from a lending institution?

5 A. In the Wednesday call, he is much more
6 optimistic about being able to provide commitment
7 letters. By the time we're getting to Friday and
8 Saturday and follow-on drafts, that becomes softer,
9 but again, like I said, we'd get through a call, we
10 thought we'd get here, and all of a sudden we're back
11 here, so we kept doing this stagger approach as we got
12 to a document.

13 Q. What was he saying in the Friday, Saturday
14 calls that you reference about a commitment letter?

15 A. When we get the draft, I pull out all the
16 operating lease language, and so after the call, we
17 get another LOI. I'm yanking all this operating lease
18 language in and I put in what's called a commitment
19 block and I say we've got to do a commitment because
20 we talked about the commitment verbally. We've talked
21 about that we need this letter, we need a firm
22 commitment letter, we need it by next Thursday July

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1 22nd in order to do the JAL deal. So I put in this
2 commitment block.

3 So we hear verbally that oh, we can do
4 that. Then we see the next draft, you know, then it's
5 well, we're not really sure, and they changed the
6 language, but they put in language then eventually
7 that has language similar to what we believe is
8 exactly what we asked for, you have to by next
9 Thursday July 22nd, firm commitment letter for JAL, no
10 operating lease, because that was the other big issue,
11 operating lease. No operating lease.

12 They come back say and they say well, you
13 might want an operating lease. Just have the language
14 so you have the option. You don't have to do it. We
15 understand you don't want operating leases, but you
16 know, if we have the language in there, you can still
17 do it, but you know, you've got these conditions
18 precedent inside the LOI, and one of them is mutual
19 agreement on all of the terms and conditions, and
20 there's a variety of terms and conditions in here that
21 haven't been settled upon, and so there's still --
22 until we can present you with a deal, there's still

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1 ways that you don't have to do this.

2 Q. Backing up, in the conversation you
3 attributed to the July 14th, when the discussion of --
4 of going to the market, so to speak, came up, did Mr.
5 Hodges address why he needed that, why he needed a
6 letter to show that he'd been -- that he's working for
7 National?

8 A. I have a lot of the soft commitments, I can
9 get this job done but you have other people in the
10 market, and these other people, it will confuse them.
11 They won't do it with me until I can clearly show them
12 that I'm working with you. That's why I need this
13 letter.

14 Q. And at some point did National request that
15 any agreement with Mr. Hodges have language that
16 indicated it was nonexclusive?

17 A. There was -- Mr. Hodges was trying to get
18 exclusive, and we were pushing back that it is
19 nonexclusive.

20 Q. But was there -- did National propose at
21 one point a draft that included language that said --
22 that would make the agreement nonexclusive, would say

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1 Intent."

2 (Exhibit 107
3 was marked for
4 identification.)

5 BY MR. KULA:

6 Q. My question would be, Mr. Joerger, when
7 you've a chance to review that, is this the next
8 version of the letter of intent you received from Mr.
9 Hodges after that phone call that you referenced?

10 A. The phone call was on Wednesday, and we
11 believe that this is the LOI we then received on
12 Thursday night following that call on Wednesday.

13 Q. And Mr. Stukes' e-mail that's on page 1
14 indicates that, middle there, "Jacob and his team is
15 prepared to have a conference call with you and your
16 team upon your review of the LOI." It's actually to
17 Mr. Alf, but you're copied there as well, so was there
18 a conference call then to discuss this draft LOI?

19 A. We did have another call with them on
20 Friday.

21 Q. And what was said during that call?

22 A. There's now a series of calls. This is the

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1 first time on this LOI on page 9879 that the
2 requirement for any operating lease is now pulled out
3 of the document, and so to further show that what I
4 just told you happened on Wednesday, in the paragraph
5 of aircraft price when we compare document to
6 document, it's now gone. I go back and do some more
7 work on commitment language, so we have other -- we
8 further refine the discussions as we move forward.
9 This is also the first time, interestingly enough,
10 that we see this conglomeration Global BTG working
11 with GreenRock Capital.

12 Q. And did you talk to Mr. Stukes about that,
13 about the name Global being in the document?

14 A. My recollection was that we all believed
15 that this was some kind of special entity working with
16 GreenRock, Pearl, and it was called Global BTG. We
17 had just seen a similar one in our dealings with the
18 Air France aircraft.

19 Q. But do you recall any explanation from Mr.
20 Stukes about why the name Global is there when he had
21 been using the name Pearl in his letters?

22 A. No.

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1 Q. Did you ask him about it?

2 A. I don't remember specifically asking him
3 about it.

4 Q. Did it matter to you as long as they could
5 deliver on what they were committing to do?

6 A. Absolutely. If I'd known way back when a
7 month earlier that we weren't dealing with Pearl
8 Aviation and we were dealing with a person that had no
9 affiliation with a lender that could have made this
10 happen, we would have never wasted our time and we
11 would have been with Goldman several weeks earlier and
12 most likely would have made that deal happen. So the
13 fact that what was represented to us on multiple calls
14 and multiple e-mails was untrue was a severe impact.

15 Q. Do you recall if there was anything in
16 writing at this time from National addressing this
17 issue of it being Global versus Pearl versus somebody
18 else?

19 A. We don't know this issue yet. That's the
20 problem. At this point we don't -- we still don't
21 know. We still think Pearl is involved in this.

22 Q. Okay, this draft LOI that we're looking at,

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1 reference to the operating lease?

2 A. At this point there's no exclusivity,
3 there's no operating lease, there still is not yet the
4 commitment language for the firm commitment by
5 Thursday July 22nd.

6 Q. Did you ever discuss these calls you've
7 been referencing with Mr. Hodges, where the
8 arrangement would be exclusive between --

9 A. The arrangement is never exclusive. He has
10 a period of time between the time the signing of the
11 LOI to get a firm commitment letter by Thursday July
12 26th.

13 Q. My point -- my question is it did the issue
14 of exclusivity, did that word come up in your
15 conversations with him.

16 A. Yes, sir.

17 Q. Okay, and what was said about that?

18 A. They wanted exclusivity.

19 Q. And what did National say?

20 A. No.

21 Q. Was any further words said or was it just a
22 one-sentence request and denial?

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1 A. I'm sure it was more on both sides. I'm
2 sure they said more than we want exclusivity and I'm
3 sure we said more than no, but that was the gist of
4 the conversation.

5 Q. Do you recall in these discussions that --
6 whether in writing or -- writing or -- or in the
7 verbal discussions, that Mr. Hodges was going to walk
8 away from the deal if he didn't have exclusivity?

9 A. No, I never sensed that. I sensed that Mr.
10 Hodges wanted a deal and Mr. Hodges kept making
11 various offers the same way Mr. Stukes wanted to make
12 a deal, and we kept being adamant about what we wanted
13 and they slowly came around to what we were
14 requesting.

15 Q. But do you ever recall Mr. Stukes
16 presenting you with essentially an ultimatum from --
17 from Mr. Hodges saying he has to have -- he has to be
18 exclusive?

19 A. I get various ultimatums and I can remember
20 various ultimatums where he has to do capital leases,
21 -- operating leases. Not capital leases, operating
22 leases, and that he can't do it unless he has

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1 operating leases. It's so common for folks in
2 negotiating sessions to say if I don't get this, I'm
3 walking away. Then you go well, I'm not doing that.
4 They go well, hmm, okay, well, what if I do this? And
5 so running across somebody in a negotiation who
6 insinuates they're going to walk away from a deal if
7 they don't get something is so common that you almost
8 get used to it.

9 MR. KULA: Okay, let's mark as the next
10 exhibit, 110, an e-mail from Mr. Stukes to Mr. Alf and
11 copied to Mr. Joerger. It's NAC010340 through 44.

12 (Exhibit 110

13 was marked for
14 identification.)

15 BY MR. KULA:

16 Q. Do you recall receiving this e-mail?

17 A. Yes, sir.

18 Q. And the second sentence says, "One issue is
19 they will not proceed on a nonexclusive basis. That's
20 a nonstarter for them unfortunately." Did you have
21 any follow-up discussion with Mr. Stukes in regard to
22 that point?

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1 A. Yes, sir.

2 Q. And what was that discussion?

3 A. We're not going to do exclusive.

4 Q. And do you know whether he ever
5 communicated that to Mr. Hodges?

6 A. I can only assume.

7 Q. But did he ever tell you?

8 A. He told us that he communicated everything
9 we told him.

10 Q. Did you ever see anything in writing where
11 it's being communicated to Mr. Hodges that the deal's
12 nonexclusive?

13 A. The LOI.

14 Q. Does it say it's nonexclusive?

15 A. In my perspective, it does.

16 Q. Do you know -- did it use those words, did
17 you ever see these words in it?

18 A. They wanted to put it in. They drafted it.
19 We told them we would not accept it. They never put
20 the wording in that it was exclusive. So they kept
21 saying we want it. We kept saying if you put it in,
22 we're not accepting it, and they never put it in.

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1 BY MR. KULA:

2 Q. Do you recall this -- receiving this
3 version?

4 A. Yes, sir. I didn't receive it. I sent it.

5 Q. Excuse me, sending this version. Well, you
6 received it from Mr. Stukes and you sent it on to Mr.
7 Alf? Is that what happened?

8 A. Yes, sir.

9 Q. And you're telling Mr. Alf in your e-mail,
10 "This is what we agreed to, and we've noted there are
11 several get out clauses. If you're comfortable,
12 recommend you sign". And the version attached here,
13 if you look at that page, what is essentially page 2
14 of the LOI, but here it's Bates number 7821, it does
15 not include the language that was in the draft you
16 sent back, which was Exhibit 109. Do you see that?

17 A. I do, yes, sir. Nor is there any language
18 that says it's exclusive, which is what they asked
19 for. They drafted it on more than three occasions.
20 This is the third draft and there is no exclusivity
21 language inserted, so yes, I do note it both.

22 Q. And so that -- so National was agreeable to

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1 this version of the LOI that did not have that
2 language that you had requested be inserted in Exhibit
3 109, that is, language below the box referencing the
4 aircraft.

5 A. This was acceptable to us because it did
6 not have operating lease requirements and it did not
7 have a requirement for exclusivity and it did have a
8 commitment that they would provide firm commitment
9 letters by Thursday July 22nd. That's why it was
10 acceptable to us.

11 Q. Okay, let's look at page 7826. You
12 referenced previously that you had left a placeholder
13 in your draft for commitment, and they had instead put
14 the word "other" sort of as the subtitle and put
15 language there. If you look at page 7826, that's
16 where you're referring to where it says "other"?

17 A. Yes.

18 Q. It says, "The parties agree that Global
19 will use its best efforts to deliver to National on or
20 before Thursday July 22nd, 2010 an MOU from a
21 qualified lender to provide capital to purchase
22 aircraft under a loan" slash, "and/or finance lease."

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1 That's the language that National agreed to, correct?

2 A. That's the language that they drafted and
3 that we agreed to.

4 Q. And this language as written here
5 accurately reflects what you understood the parties
6 were agreeing to do.

7 A. This language reflects that we believed
8 that prior to Thursday July 22nd, that Global would
9 deliver to us commitment letters from qualified
10 lenders to purchase aircraft under a loan or finance
11 lease.

12 Q. It says would use best efforts to deliver.
13 What do you understand best efforts to mean?

14 MR. RICHMOND: I'll object only to the
15 extent, Counsel, you and I both know there's a whole
16 body of law developed on what that term might or might
17 not mean. This man's not a lawyer, but to the extent
18 he can answer, go ahead.

19 A. And I know nothing about that body of law.
20 What I do know is that we were talking at the last
21 minute and their promises that we can do it, we can do
22 it, we can do it softened at the last in the Saturday

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1 conversations to like well, you know, we can't do it
2 today, but if you give us this letter, we can do it
3 between now and Thursday. So today we can't do it,
4 but we can do it by Thursday. So this is their
5 language as they crafted it to come up with that
6 concept.

7 Q. Well, putting aside the legal meaning,
8 because I understand you're not a lawyer and you
9 wouldn't know and I don't know all the body of law on
10 best efforts, but you hear the term "best efforts,"
11 what do you -- what do you understand that to mean?

12 A. I understand that promises that they made,
13 and so what I was inferring to this is the promises
14 that are being made on the phone call, we can get this
15 done, we've got soft commitments, we've got all these
16 -- soft commitments already, they're ready to go. All
17 we need -- you give us this letter and you sign this
18 and we'll have the firm commitments by Thursday of
19 next week, because we say you don't have it by
20 Thursday of next week. Can you do it by Thursday?
21 Absolutely, we can do it by Thursday but you got to
22 sign this so we can go to the market. The market

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1 doesn't know that we're working on your behalf until
2 we get this letter, but once we get this letter, we'll
3 have those firmed up by Thursday of next week.

4 Q. When you say this letter, you're referring
5 to what we've marked as part of Exhibit 111?

6 A. I'm referring to this letter of intent.

7 Q. And you understand the letter of intent to
8 be binding, correct?

9 A. The letter of intent would be binding under
10 certain precise conditions.

11 Q. Well, let's look at the last page of it,
12 realizing this is not a signature copy, but you know,
13 I think the record will reflect it's identical to the
14 signature copy. The last paragraph says, "This letter
15 of intent is intended as a binding agreement between
16 the lessor and lessee, who will act in good faith to
17 implement provisions hereof to complete the
18 contemplated transactions and to negotiate, execute
19 and deliver all necessary and appropriate leases and
20 other agreements in the form or substance consistent
21 with industry standards in a timely manner," period.
22 That's language that National will agreed to, correct?

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1 A. It is National, that they drafted and that
2 we signed, including the other conditions precedents
3 and the other clauses throughout the rest of the
4 agreement, yes.

5 Q. But when you signed this, you signed this
6 on behalf of National, correct?

7 A. Yes, sir.

8 Q. You and the company intended it to be
9 binding, correct?

10 A. We intended that if Global, the entity,
11 consisting of whoever their partners were, if they
12 could go out by Thursday July 22nd and get a
13 commitment from a qualified lender with funds that
14 would be able to provide capital to purchase these
15 aircrafts so we could show this commitment letter to
16 JAL and if it was on mutually satisfactory terms as
17 outlined in the condition precedent, along with all
18 the other conditions precedent, along with all the
19 other clauses in the agreement because there's a lot
20 of very vague and open ended, if all of that was true,
21 then yes, this would be binding. However, on Thursday
22 July 22nd they did not have what they promised to

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1 provide, but had they, along with everything else, it
2 would have been binding in our opinion. That's what
3 was represented to us.

4 Q. Well, going back a page, isn't what they
5 agreed to was use their best efforts to do that?

6 MR. RICHMOND: Objection. You've asked him
7 and answered.

8 A. What they told us they would do is they
9 would firm up their soft commitments by Thursday July
10 22nd and provide a firm commitment of funds from a
11 qualified lender under a lease or a loan so that we
12 could provide it to JAL. This was not open ended.
13 This was not to go to July 23rd, 24th, 25th. It was
14 put in July 22nd, not maybe, not maybe you can, maybe
15 you can't. July 22nd, firm commitment letter, because
16 if not, we're going to go to Goldman.

17 Q. Mr. Joerger, in internal discussions, that
18 is, at National and with Mr. Stukes, did you not
19 express that at one point you did not want a best
20 efforts contract, a best efforts agreement with --
21 with Mr. Hodges?

22 A. We discussed that we cannot have a best

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1 efforts letter. We cannot have a letter that says
2 we're going to try. We need a firm commitment letter
3 from a qualified institution that says they have
4 funds, which is what this says.

5 Q. But then National did agree to this letter
6 of intent that has the best efforts language in it.

7 A. No.

8 MR. RICHMOND: Just objection. I think
9 you've asked the question three or four times and it's
10 been answered, and Counsel, I want to ask you, it's
11 almost 5:00. We came here eight hours ago and we took
12 a one-hour lunch, so what are your intentions? How
13 much longer do you have, what would you like to do?

14 MR. KULA: Well, I'd have to consult. I
15 think we have approximately another hour of time for
16 this deposition.

17 MR. RICHMOND: I think not.

18 MR. KULA: I think we do.

19 MR. RICHMOND: Is that your intention, to
20 go another hour?

21 MR. KULA: Yes.

22 MR. RICHMOND: Well, we're not staying an

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1 Pearl ever presenting us a commitment letter from a
2 qualified lender to meet the requirements of the
3 purchase of this aircraft, so when you say MOU, you've
4 now introduced another term. It is in this. It's the
5 term they used. It's not a term we generally use, so
6 we use term sheet, we use LOI, like you saw that many
7 other letters. So they introduce a new term, MOU,
8 okay. So are you asking did they ever present us a
9 term sheet, did they ever present us a firm commitment
10 lender from an institution that has capital? I don't
11 know what you're asking me.

12 Q. But in your -- in National's mind, Mr.
13 Hodges and Global failed to deliver a letter that they
14 believed was promised, correct?

15 A. Yes, sir.

16 Q. So what happened after that in regard to
17 financing? What did National do?

18 A. National went with Goldman. We eventually
19 went with another institution that provided us the
20 funding for three of our 747s. We also get funding
21 from Wells Fargo that we purchased four 757s, along
22 with company cash in both deals.

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1 Q. And ultimately JAL was prepared to proceed
2 with the transaction, correct?

3 A. Ultimately National and JAL were prepared
4 to proceed at some point, but we never got consummated
5 agreements.

6 Q. And why is that?

7 A. There were some technical issues as well as
8 the guaranties that they wanted. They wanted personal
9 guaranties.

10 Q. And did National make a decision that from
11 a business standpoint, that they simply did not want
12 that many planes at that point in time?

13 A. No, National decided that based on the
14 technical conditions of the aircraft and based on the
15 requirement for a personal guaranty, that they were
16 not going to proceed, which is not to say that there
17 weren't some people in the company that had expressed
18 concerns, but that was not the reason.

19 Q. And when National informed JAL of that, did
20 JAL indicate that it very much wanted Global to still
21 proceed?

22 A. Global?

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1 what they promised to produce in a timely manner, we
2 still may have gone through with the deal because it
3 would have taken one of the variables of the deal, of
4 the two reasons why we pulled.

5 Q. You say you may have. You just don't know?

6 A. I can speculate all day long, but I'm one
7 member of the board of directors, and we didn't sit
8 around as a board of directors and speculate a lot of
9 what-ifs.

10 MR. KULA: Okay, let's mark as Exhibit 112,
11 it's an e-mail, July 22nd, 2010 from Mr. Alf to Mr.
12 Joerger. It's forwarded -- but it's forwarded to Mr.
13 Stukes, that includes a document from Global BTG.

14 (Exhibit 112

15 was marked for
16 identification.)

17 BY MR. KULA:

18 Q. Do you recall this e-mail and the
19 attachment, Mr. Joerger?

20 A. Yes, sir.

21 Q. And the letter attached was presented by
22 Mr. Hodges to National?

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EXHIBIT 1

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Glen Joerger - May 23, 2012

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1 A. I believe it was presented by Mr. Hodges to
2 Mr. Stukes, who presented it to National.

3 Q. And did National find this not to be
4 satisfactory relative to the LOI and the, as you said,
5 commitment language?

6 A. Yes, sir, this is not satisfactory.

7 Q. And why was it not satisfactory?

8 A. Can I have a copy of the LOI back? I have
9 it right here. No, I don't. You pulled it out. You
10 pulled out the other language out of this so --
11 because it doesn't meet the wording. Mr. Hodges is
12 not a qualified lender. He doesn't have funds, he
13 can't provide the commitment, and he didn't do it by
14 Thursday July 22nd, so all of those conditions of what
15 he needed to provide specifically from that letter of
16 intent, he doesn't meet it. He's not it. He's not a
17 qualified lender, so start first thing. It had to be
18 from a qualified lender. He's not. He doesn't agree
19 to provide capital for this aircraft under a loan or
20 finance lease, so no, he doesn't meet it.

21 Q. Now, did anyone communicate back to Mr.
22 Hodges that this letter was not sufficient?

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Glen Joerger - May 23, 2012

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1 THE VIDEOGRAPHER: This is the end of Tape
2 5 in the videotaped deposition of Glen Joerger. We
3 are off the record at 5:17.

4 (Recessed at 5:17 p.m.)

5 (Reconvened at 5:22 p.m.)

6 THE VIDEOGRAPHER: Here begins Tape 6 in
7 the videotaped deposition of Glen Joerger. We are
8 back on the record at 5:22.

9 BY MR. KULA:

10 Q. Mr. Joerger, is it your view that Mr.
11 Hodges' actions damaged National relative to the Air
12 France deal, the deal to acquire Air France airplanes?

13 A. I think it caused us to have to go after in
14 a very short time period a hedge fund where we paid a
15 higher interest rate.

16 Q. Was not National pursuing that in an event?
17 Wasn't that in the works?

18 A. We had never pursued BlackRock until after
19 July 22nd.

20 Q. Mr. -- the commitment letter that you've
21 testified to that was sought you said by JAL, that had
22 nothing to do with Air France, correct, the Air France

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EXHIBIT 1

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Glen Joerger - May 23, 2012

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1 deal?

2 A. No, sir.

3 Q. And after the July 22nd date you've
4 testified to, did not Mr. Hodges, perhaps through Mr.
5 Stukes, indicate that it they would still be able to
6 provide financing or seek financing for the Air France
7 deal?

8 A. Mr. Hodges made a lot of promises.

9 Q. But there was no -- no further working with
10 Mr. Hodges at that point, correct? You stopped
11 working with him?

12 A. I don't know about working. We continued
13 to communicate with him.

14 Q. But --

15 A. I don't believe he was working on our
16 behalf. If he was, we had told him not to work on our
17 behalf. What he actually did or did not do I am not
18 aware of.

19 Q. But -- at least in your mind, how was the
20 company damaged by the company having to use this, as
21 you said, BlackRock for Air France based on what Mr.
22 Hodges did?

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1 A. If we had -- we took our foot off the gas
2 when we signed that LOI on Saturday into Sunday and he
3 started on Sunday, and we took our foot off the gas to
4 allow him the opportunity to have the best chance of
5 success, because that's what he asked us to do. We
6 didn't give him exclusivity, but we were trying to
7 good faith give him every opportunity for success on
8 the myriad of things that he promised us. And so in
9 taking our foot off the gas, we then shortened our
10 potential time frame that we had to work with
11 qualified lenders to get a better interest rate.

12 Q. How many days did you take your foot off
13 the gas?

14 A. From Saturday through Thursday July 22nd.

15 Q. Did you stop working with Goldman during
16 that time?

17 A. We stopped having active -- we didn't
18 actually -- Goldman didn't work on our behalf until
19 July 23rd when we signed a mandate. Goldman will not
20 work on your behalf until you sign that mandate letter
21 with them.

22 Q. Did you stop having discussions with

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Glen Joerger - May 23, 2012

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1 Goldman during that time?

2 A. We had to have discussions -- we never had
3 discussions about the market. We never had
4 discussions about qualified lenders, we never had
5 discussions on potential people that we could do
6 something. We let our foot off the gas for that
7 period of time to allow Global to have the most
8 opportunities for success, so yes, we gave up those
9 days.

10 Q. But you're not -- you're not saying --
11 well, did -- so you're saying that you acted -- you
12 being National acted in some fashion different than
13 you otherwise would have acted with Global -- with
14 Goldman based on the signing of the LOI with -- with
15 Global?

16 A. We would have probably signed the Goldman a
17 week earlier.

18 Q. No, what I meant is the discussions you had
19 with Goldman during this time, the communications you
20 had with Goldman were different than they otherwise
21 would have if you had not signed the LOI with Mr.
22 Hodges?

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1 CERTIFICATE OF DEPONENT

2 I have read and examined the foregoing 306
3 pages and find the answers contained therein with
4 changes made by me, if any, to be true and correct.

5

6

7 Signature of the Witness

8

9 Subscribed and sworn to before me this
10 _____ day of _____, 20 _____.
11

12

13

14 Notary Public in and for

15

16

17 My Commission Expires _____.

18

19

20

21

22

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1 UNITED STATES OF AMERICA)

2 ss:

3 DISTRICT OF COLUMBIA)

4 I, KAREN C. YOUNG, a Notary Public within
5 and for the District of Columbia, do hereby certify
6 that the witness whose deposition is hereinbefore set
7 forth was duly sworn and that the within transcript is
8 a true record of the testimony given by such witness.

9 I further certify that I am not related to
10 any of the parties to this action by blood or marriage
11 and that I am in no way interested in the outcome of
12 this matter.

13 IN WITNESS WHEREOF, I have hereunto set my
14 hand this 7th day of July, 2012.

16 Karen Young

17
18 My Commission Expires:

19 July 31, 2014

20

21

22

EXHIBIT 2

In The Matter Of:

GLOBAL BTG, LLC

v.

NATIONAL AIR CARGO

HODGES, JACOB S. - Vol. 1
May 31, 2012



JACOB S. HODGES - 5/31/2012

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1 that I raised \$1 billion in debt financing, as I
2 already said, that I called upon my banks, my
3 contacts, my relationships in the market to solicit
4 from them financing either by issuing an RFP, a
5 request for proposal, or by talking to them about a
6 transaction or a scenario, be it a line of credit
7 that we were in the market for, desired to obtain a
8 line of credit to acquire credit, a warehouse line,
9 if you will.

10:16:53
10:16:57
10:16:59
10:17:06
10:17:10
10:17:13
10:17:16
10:17:20
10:17:24

10 It involves calling on those banks,
11 educating them on the desired structure, whichever
12 it may be, a term loan, a line of credit, finance
13 lease, operating lease; requesting that they provide
14 funds or provide or show expressions of interest --
15 a commitment letter, a term sheet proposal -- to
16 support us in that activity. That all encompasses
17 raising financing.

10:17:25
10:17:27
10:17:30
10:17:34
10:17:37
10:17:40
10:17:42
10:17:48

18 Q. But let's say money never flowed. You got
19 all these things in place that you just described,
20 but actually, then, the deal never closed and money
21 never flowed.

10:17:49
10:17:52
10:17:55
10:17:58

22 Would you still consider that raising the
23 financing?

10:17:59
10:18:02

24 A. If commitment letters have been issued, if
25 term sheets had been provided, if proposals were

10:18:02
10:18:06

JACOB S. HODGES - 5/31/2012

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1 received, those are hard indications that that bank
2 is committed to financing that project.

10:18:09

3 Q. If the money never flowed at the end of the
4 day, do you count that in your definition of raising
5 debt financing?

10:18:14

6 A. I think raising debt financing is a process
7 of doing all of the above. Receiving a commitment
8 letter is to have raised financing. A term sheet, a
9 proposal, I raised that financing, yes.

10:18:17

10:18:20

10:18:24

10:18:25

10:18:31

10:18:34

10:18:39

10:18:45

10:18:48

10:18:48

13 Q. Who was legal?

10:18:49

14 A. That was -- primarily we had in-house
15 counsel and we had outhouse --

10:18:50

10:18:52

16 MR. SMITH: Yes, we have been called that
17 before.

10:18:56

10:18:58

18 THE WITNESS: They certainly were not that.
19 They were very, very good. Rothgerber Johnson &
20 Lyons was outside counsel. T.D. Butzbaugh was
21 general counsel.

10:19:00

10:19:01

10:19:07

10:19:11

22 BY MR. RICHMOND:

10:19:12

23 Q. And you worked directly with those two
24 gentlemen?

10:19:12

10:19:15

25 A. Yes, I did.

10:19:15

JACOB S. HODGES - 5/31/2012

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1	Q.	What did you do with them?	10:19:16
2	A.	They were very involved. Outside counsel	10:19:18
3		was acting as general counsel for the company. I	10:19:22
4		didn't so much interact with them in that capacity.	10:19:26
5		I primarily interacted with them on transactions.	10:19:28
6	Q.	In what way?	10:19:31
7	A.	On -- primarily on two fronts: one with	10:19:33
8		negotiating loan documentation; secondly with	10:19:38
9		negotiating -- or involvement with closing the	10:19:42
10		transaction, which involved consummating the lease	10:19:45
11		agreement and so forth.	10:19:50
12	Q.	If I told you that at the time you joined	10:19:56
13		BCI it had total assets of \$541 million,	10:20:00
14		approximately, would that sound right to you?	10:20:04
15	A.	No.	10:20:07
16	Q.	What do you think the assets were of BCI	10:20:09
17		Aircraft Leasing group as of December 31, 2004?	10:20:13
18		MR. SMITH: If you know.	10:20:17
19		THE WITNESS: I don't know. I don't recall	10:20:18
20		exactly. I believe they were closer to 400 million.	10:20:19
21		BY MR. RICHMOND:	10:20:23
22	Q.	What are you basing that on?	10:20:23
23	A.	Just recollection of financial statements	10:20:25
24		at that time, but not knowing the exact number.	10:20:30
25	Q.	And at BCI's peak, if you know -- in other	10:20:34

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1	A. I was unaware of Brian Hollnagel's involvement in Pearl.	10:49:31
2		10:49:34
3	Q. You've raised the name Pearl. We were just talking about BCI.	10:49:35
4		10:49:38
5	Who is Pearl?	10:49:41
6	A. You asked if I had gone on a road show at that point in time --	10:49:42
7		10:49:47
8	Q. Correct.	10:49:47
9	A. -- with Mr. Gunnar Sachs.	10:49:48
10	Q. Yes.	10:49:50
11	A. I understood Mr. Gunnar Sachs to be associated with Pearl.	10:49:51
12		10:49:54
13	Q. Were you associated with Pearl at that time?	10:49:55
14		10:49:58
15	A. I was considering being associated with Pearl.	10:49:58
16		10:50:01
17	Q. But you were not then associated with Pearl?	10:50:03
18		10:50:05
19	A. No.	10:50:05
20	Q. And you were not then associated with BCI?	10:50:06
21	A. That's correct.	10:50:09
22	Q. You were just on your own?	10:50:09
23	A. Free agent.	10:50:11
24	Q. What was the purpose of the road show?	10:50:12

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1 litigation?

11:02:06

2 MR. SMITH: Other than as directed by your
3 attorneys.

11:02:07

4 THE WITNESS: I don't know that I did
5 personally. I don't know that that was my
6 responsibility to do that. I believe that the
7 attorneys and others were in process of obtaining
8 all that information. I may have. I don't recall
9 if I did specifically or not.

11:02:10

10 BY MR. RICHMOND:

11:02:11

11 Q. Where is Global physically located?

11:02:12

12 A. Global BTG is a Los Angeles-centered
13 company.

11:02:15

14 Q. Where is Global physically located?

11:02:18

15 A. It's a Nevada-registered LLC.

11:02:23

16 Q. Where is Global physically located?

11:02:25

17 A. Global BTG is here in Los Angeles. It's
18 with me. I live and reside in Camarillo.

11:02:29

19 Q. So Global BTG is in Camarillo?

11:02:50

20 A. Yes. As it pertains to my role within that
21 company, yes.

11:03:04

22 Q. Does it reside somewhere else?

11:03:09

23 A. Well, Global BTG actually is like many
24 companies. It has -- and especially in aircraft
25 finance, it has people in various different places

11:03:09

11:03:15

11:03:18

11:03:20

11:03:23

11:03:27

11:03:31

11:03:36

11:03:37

11:03:39

11:03:44

11:03:48

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1 that render services to it. So one could answer
2 that question that it's also in various locations
3 that they are in.

4 MR. SMITH: And I will object belatedly to
5 the extent it calls for a legal conclusion.

6 BY MR. RICHMOND:

7 Q. Global doesn't have any facility or
8 anything at 5482 Wilshire Boulevard in Los Angeles,
9 does it?

10 A. No. That's a P.O. box.

11 Q. And are you saying you considered Camarillo
12 to be part of Los Angeles?

13 A. I don't necessarily. I think it's part of
14 the greater Los Angeles. It's a way to -- for
15 people outside of the area -- nobody knows where
16 Camarillo is. They associate everything with
17 Southern California as being Los Angeles.

18 Q. You think people associate everything with
19 Southern California as being Los Angeles?

20 A. With the exception of San Diego.

21 Q. Orange County?

22 A. Yes.

23 Q. You think -- who -- let me ask it a
24 different way.

25 Your view is that people consider Orange

11:03:51

11:03:54

11:03:58

11:04:00

11:04:02

11:04:04

11:04:05

11:04:07

11:04:11

11:04:11

11:04:17

11:04:21

11:04:23

11:04:26

11:04:28

11:04:31

11:04:35

11:04:36

11:04:39

11:04:40

11:04:43

11:04:43

11:04:44

11:04:48

11:04:49

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1	Q.	In its own name?	11:13:57
2	A.	Yes.	11:13:59
3	Q.	Where is that bank account?	11:13:59
4	A.	It's here in Los Angeles.	11:14:00
5	Q.	Where?	11:14:02
6	A.	Bank of America.	11:14:02
7	Q.	Which branch?	11:14:03
8	A.	Thousand Oaks branch.	11:14:05
9	Q.	What street is that on? Do you know?	11:14:08
10	A.	No. It's the branch next to the Thousand	11:14:12
11	Oaks mall, whichever street that is.	11:14:16	
12	Q.	Is Global BTG, LLC, capitalized?	11:14:18
13	A.	The full name?	11:14:23
14	Q.	No. I am sorry. I meant in terms of	11:14:24
15	money.	11:14:27	
16	Does Global BTG, LLC, have any capital	11:14:27	
17	invested in it, any money?	11:14:33	
18	A.	No. Outside of what I put into it, no.	11:14:35
19	Q.	What have you put into it?	11:14:37
20	A.	I have made deposits into the accounts.	11:14:39
21	Q.	When you say you have made deposits into	11:14:41
22	the accounts, where has that money come from?	11:14:44	
23	A.	Personal money.	11:14:46
24	Q.	How much?	11:14:47
25	A.	I don't recall exactly.	11:14:48

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1	Q.	Less than \$10,000?	11:14:51
2	A.	I don't recall. I would have to look at	11:14:53
3		the formation agreement.	11:14:56
4	Q.	Less than \$25,000?	11:14:58
5	A.	Probably.	11:15:00
6	Q.	Does Global BTG, LLC, have any employees?	11:15:02
7	A.	No.	11:15:06
8	Q.	When you do Global BTG, LLC's work up in	11:15:07
9		Camarillo, am I correct that you do that work in	11:15:11
10		your home?	11:15:14
11	A.	I have a home office.	11:15:14
12	Q.	And that's where the work for Global BTG,	11:15:17
13		LLC, is done when you are doing the work, in	11:15:21
14		Camarillo?	11:15:23
15	A.	When I am doing it in Camarillo, yes.	11:15:24
16	MR. SMITH:	Rick, we have been going about	11:15:26
17		an hour and a half, when you find a good time.	11:15:29
18	MR. RICHMOND:	This is perfectly fine.	11:15:32
19		Whenever you want.	
20	MR. SMITH:	Great.	11:15:34
21	THE VIDEOGRAPHER:	This marks the end of	11:15:34
22		Tape Number 1 in the deposition of Jacob Hodges,	11:15:36
23		Volume I.	11:15:42
24		We are off the record. It's 11:15.	11:15:42
25		(Recess.)	11:15:44

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1 A. He is a web designer. Software programmer. 11:26:57
2 Q. How did you know him? 11:27:04
3 A. He lives in Camarillo. 11:27:08
4 Q. Your E-mail to Chris, third paragraph, you 11:27:11
5 say (Reading): 11:27:15
6 "I am a managing director of the three 11:27:15
7 below companies." 11:27:17
8 Do you see that? 11:27:18
9 A. I do. 11:27:19
10 Q. On May 13, 2010, were you a managing 11:27:20
11 director of BCI Aircraft? 11:27:23
12 A. Yes. 11:27:25
13 Q. On May 13, 2010, were you a managing 11:27:26
14 director of Pearl Aircraft? 11:27:30
15 A. No. 11:27:31
16 Q. On May 13, 2010, were you a managing 11:27:32
17 director of Genesis Custom Jetliners? 11:27:35
18 A. No. I didn't hold that title there. 11:27:41
19 MR. RICHMOND: Let me have marked as 11:27:52
20 Exhibit 353 a document with the Bates Numbers GLOBAL 11:27:54
21 009837 through 009838. 11:28:03
22 (Deposition Exhibit 353 was marked for 11:28:27
23 identification.) 11:28:27
24 BY MR. RICHMOND: 11:28:28
25 Q. Mr. Hodges, the court reporter has handed

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1	you what has been marked as Exhibit 353. I will ask	11:28:30
2	you to look at that for a minute.	11:28:35
3	A. Okay.	11:28:57
4	Q. Have you had a chance to look at that	11:28:59
5	exhibit?	11:29:00
6	A. Yes. Briefly.	11:29:02
7	Q. You are having an E-mail exchange with	11:29:04
8	somebody named Clive Bowen.	11:29:07
9	Do you see that?	11:29:11
10	A. I do.	11:29:11
11	Q. Is Clive Bowen somebody who worked at	11:29:11
12	Guggenheim?	11:29:14
13	A. Yes. In the London office.	11:29:14
14	Q. On the second page of the exhibit, which is	11:29:16
15	009838, you sign yourself as Jacob Hodges, Pearl	11:29:19
16	Aircraft Corporation Limited.	11:29:26
17	Do you see that?	11:29:26
18	A. I do.	11:29:27
19	Q. At that time, which was May 27, 2010, you	11:29:28
20	did not hold any position at Pearl Aircraft	11:29:34
21	Corporation Limited; correct?	11:29:38
22	A. No, I did not.	11:29:39
23	Q. And am I also correct that as of May 27,	11:29:41
24	2010, to your knowledge, Pearl Aircraft Corporation	11:29:45
25	Limited did not have a Los Angeles office?	11:29:51

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1 Papayanis had a role here in Thousand Oaks, which, 11:31:06
2 for BCI's purposes, Thousand Oaks was referred to as 11:31:09
3 Los Angeles. It was referred to as the Los Angeles 11:31:14
4 office. 11:31:16

5 Q. As of May 27, 2010, did you have any 11:31:23
6 relationship with Pearl Aircraft Corporation 11:31:27
7 Limited? 11:31:32

8 A. Any relationship with them? I did some 11:31:35
9 work for Pearl Aircraft at that point as directed by 11:31:42
10 BCI. 11:31:45

11 Q. What was that work? 11:31:46

12 A. As I mentioned, I was involved in assisting 11:31:49
13 with the creation of the business plan, strategy, 11:31:52
14 projections, performance. May have had an 11:31:55
15 involvement in assisting with the Web site, 11:32:00
16 providing content for the Web site. 11:32:04

17 Q. But as of May 27, 2010, you didn't have any 11:32:07
18 relationship with Pearl Aircraft Corporation Limited 11:32:17
19 such as employee or director or executive or 11:32:20
20 anything like that, did you? 11:32:26

21 A. No. I was not employed by the company. 11:32:26

22 MR. RICHMOND: Let me have marked as 11:32:37
23 Exhibit 354 a document which is a printout from 11:32:39
24 Pearl Aircraft Corporation Limited's Web site. And 11:32:48
25 this was printed from the Wayback Machine. I don't 11:32:54

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1	contracted by them.	11:41:59
2	BY MR. RICHMOND:	11:42:01
3	Q. Did you understand Mr. Stukes to speak on	11:42:01
4	behalf of National Air Cargo in any way that was	11:42:05
5	binding on them at National Air Cargo?	11:42:09
6	MR. SMITH: Same objection.	11:42:13
7	THE WITNESS: I wasn't privileged to the	11:42:14
8	agreement that he had in place with National Air	11:42:16
9	Cargo, but I understood that he had -- I understand	11:42:19
10	these roles and relationships and that he was	11:42:23
11	seeking to obtain financing and playing a very vital	11:42:25
12	role within that company.	11:42:29
13	BY MR. RICHMOND:	11:42:32
14	Q. Did you understand that if Mr. Stukes spoke	11:42:33
15	purportedly on behalf of National Air Cargo, that he	11:42:38
16	really was speaking on behalf of National Air Cargo,	11:42:42
17	your point of view?	11:42:45
18	A. Yeah. I believed that he was. I believed	11:42:46
19	that what he was telling me was coming directly from	11:42:48
20	National Air Cargo. I knew that ultimately National	11:42:52
21	Air Cargo would have to sign on any agreement. That	11:42:56
22	is quite common for an advisor-arranger	11:42:58
23	relationship.	
24	Q. As of June 15, which is your E-mail to	11:43:03
25	Mr. Stukes, you are telling him to send E-mails to	11:43:07

JACOB S. HODGES - 5/31/2012

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1 you at your personal Gmail account.

11:43:09

2 Do you see that?

11:43:13

3 A. I do.

11:43:13

4 Q. Did you ask him to do that because you were
5 at that time not employed by BCI?

11:43:14

6 MR. SMITH: Foundation.

11:43:18

7 THE WITNESS: This is June 15th E-mail?

11:43:20

8 BY MR. RICHMOND:

11:43:21

9 Q. Yes.

11:43:23

10 A. Yeah. I believe that's the reason why I
11 did. I didn't -- I believe that's why.

11:43:24

12 Q. And at that time you were not then working
13 for Pearl?

11:43:25

14 A. No.

11:43:28

15 Q. And at that time you were not then working
16 for Global BTG?

11:43:31

17 A. That's correct.

11:43:34

18 Q. All right. The E-mail just above that is
19 two days later on June 17th and Mr. Stukes is
20 writing back to you; sends you a list of aircraft to
21 be purchased by National Air Cargo.

11:43:36

22 Do you see that?

11:43:39

23 A. Yes.

11:43:40

24 Q. And then in the next sentence he said

11:43:41

25 (Reading):

11:43:43

11:43:47

11:43:50

11:43:54

11:43:56

11:43:58

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1 THE WITNESS: No, it didn't set off those 02:56:04
2 alarm bells. It did make me recall that Mr. Stukes 02:56:06
3 had issued the user name and password or the user 02:56:14
4 name specifically to the data room in the name of 02:56:16
5 Pearl. And I believe it was immediately upon 02:56:17
6 receiving this E-mail from Seva that I went back to 02:56:20
7 Mr. Stukes and made that correction. 02:56:22

8 It didn't -- I had no knowledge that 02:56:25
9 Mr. Stukes was referring to me internally with 02:56:27
10 Mr. Sawhny or anyone within National Air Cargo as 02:56:31
11 Pearl. If I had been copied on any of those 02:56:34
12 E-mails, I would have corrected it. 02:56:38

13 BY MR. RICHMOND:

14 Q. Well, on July 12 did you pick up the phone 02:56:40
15 or E-mail people at National Air Cargo and say, Hey, 02:56:43
16 whoa. Whoa. I have got to get something clear with 02:56:45
17 you on Pearl? 02:56:47

18 A. I don't recall that I did. Again, at that 02:56:49
19 point in time I had no knowledge that this -- that 02:56:52
20 Mr. Stukes was representing me or Mr. Shamsai in 02:56:56
21 that way. 02:57:00

22 Q. But you knew as of July 12 that folks on 02:57:01
23 the other side of your deal certainly thought you 02:57:05
24 were Pearl; right? 02:57:07

25 A. I didn't -- well, this is Paul Sawhny. 02:57:08

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1	This is a technical advisor. It's surprising to me	02:57:13
2	even now that he was even aware of maybe a name of	02:57:17
3	an entity that was bidding on this.	02:57:21
4	Q. So no alarm bells went off in your head,	02:57:26
5	even though your user I.D. was Pearl Aviation, even	02:57:29
6	though Mr. Sawhny's calling you Pearl, nothing by	02:57:33
7	July 12 is causing you concern that, Hey, wait a	02:57:37
8	minute. Maybe they think I am somebody I'm not?	02:57:40
9	MR. SMITH: Form.	
10	THE WITNESS: Well, again, I -- the alarm	02:57:44
11	bell that goes off is -- as it relates to their	02:57:45
12	issuing the user name to the database, and I did	02:57:49
13	make that immediate correction to it.	02:57:50
14	So, yes, in a way there are alarm bells	02:57:51
15	that are sounding and saying something to that	02:57:55
16	effect, but I never had the -- I never had the	02:57:58
17	benefit of seeing that internal communication that I	02:58:01
18	now have the benefit of having seen, which shows and	02:58:06
19	suggests that Mr. Stukes is referring to me as	02:58:09
20	Pearl. I certainly never referred to myself as	02:58:12
21	Pearl.	02:58:14
22	BY MR. RICHMOND:	02:58:14
23	Q. Well, at this time, July 12, did you ever	02:58:14
24	tell National Air Cargo that Global BTG didn't exist	02:58:17
25	yet?	02:58:21

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1	A.	No. I don't recall that I did.	02:58:24
2	Q.	Did you ever tell anyone at National Air	02:58:25
3	Cargo that Global BTG was just going to have one	02:58:29	
4	owner?	02:58:32	
5	A.	None of those questions were ever asked of	02:58:34
6	me. There was -- again, Mr. Stukes contacted me on	02:58:36	
7	this transaction, contacted me to structure a sale	02:58:41	
8	and leaseback.	02:58:44	
9	Q.	Did you ever tell anyone at National Air	02:58:45
10	Cargo that National Air Cargo was only going to have	02:58:47	
11	one owner?	02:58:50	
12	A.	No.	02:58:50
13	Q.	Did you ever tell anyone at National Air	02:58:51
14	Cargo -- I may have asked the wrong question.	02:59:00	
15	MR. SMITH:	You did, I believe.	02:59:03
16	MR. RICHMOND:	Let me re-ask it.	
17	Q.	Did you ever tell anyone at National Air	02:59:04
18	Cargo that Global BTG would only have one owner and	02:59:07	
19	it was going to be you?	02:59:11	
20	A.	I was never asked. If I were asked that	02:59:12
21	question, I would have provided that information.	02:59:15	
22	Q.	Did you ever tell anyone at National Air	02:59:17
23	Cargo that Global BTG was only going to have one	02:59:19	
24	owner and that owner was going to be you?	02:59:22	
25	A.	No. I think it was clear all along that	02:59:24

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1 you define as exclusivity -- it's very important to 03:28:42
2 you as you've said, but when you say the you needed 03:28:45
3 that exclusivity with respect to the finance part of 03:28:47
4 it, what exactly do you mean with respect to 03:28:52
5 everyone else in the world? How is it exclusive to 03:28:56
6 you? 03:28:57

7 A. Well, exclusivity to me implies that no one 03:28:57
8 else is out trying to finance or purchase, whatever 03:29:01
9 the matter may be, these specific aircraft. In this 03:29:04
10 matter, both finance and purchasing these aircraft; 03:29:06
11 that they have given that to us, to Global BTG, LLC. 03:29:09

12 That's to say that Don Stukes is not 03:29:13
13 continuing to try to arrange financing. Mr. Joerger 03:29:15
14 or Mr. Alf or anybody within National Air Cargo or 03:29:19
15 any outside advisors or consultants, including 03:29:22
16 Goldman Sachs, that they have given that over to 03:29:26
17 Global BTG. 03:29:28

18 Q. And you say that was a deal killer for you? 03:29:29

19 A. Absolutely. 03:29:31

20 Q. Is there anything in Exhibit 374 that you 03:29:32
21 see in terms of language that gives you that 03:29:34
22 exclusivity? 03:29:37

23 A. Well, specifically this was a working 03:29:39
24 document up to this point. There was nonexclusive 03:29:42
25 language that was introduced into this agreement 03:29:47

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1 just the day before -- I believe it was by 03:29:51
2 Mr. Joerger -- wherein he attempted to carve out, to 03:29:52
3 suggest that if we obtained financing from -- or if 03:29:56
4 we obtained -- I don't recall the exact language, 03:29:58
5 but he introduced nonexclusive language which would 03:30:04
6 have carved out and given him the ability to 03:30:08
7 continue to work with other financial institutions 03:30:11
8 to sell and to finance certain aircraft through 03:30:13
9 them. 03:30:15

10 I objected to the language. We took it 03:30:15
11 out. National did not object to us taking it out. 03:30:19
12 I believed that that was clear, that we were -- had 03:30:23
13 to have exclusivity and that they conceded on that 03:30:25
14 point. They allowed it. 03:30:28

15 Q. In Exhibit 374 itself, recognizing what 03:30:31
16 you've just said, is there any language you would 03:30:35
17 point to that gives you exclusivity? 03:30:38

18 A. I think the document itself to me is an 03:30:43
19 exclusive document, given that it's a buy-sell 03:30:48
20 agreement. It is a purchase and lease back. 03:30:52

21 Q. I understand all that and I appreciate it, 03:30:57
22 but my question is: Is there any particular 03:31:00
23 sentence or paragraph you would point to as giving 03:31:01
24 you exclusivity? 03:31:04

25 A. The word "exclusivity" I don't believe is 03:31:06

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1	contained within the LOI.	03:31:09
2	Q. Let me ask you -- I'm going to go to a	03:31:12
3	different topic, from exclusivity to whether the	03:31:37
4	final letter of intent required National Air Cargo	03:31:41
5	to do an operating lease or not.	03:31:47
6	Mr. Hodges, is there anything you would	03:31:51
7	point to in Exhibit 374 in terms of language in the	03:31:54
8	letter of intent that you believe obligates National	03:32:01
9	Air Cargo to do an operating lease?	03:32:04
10	A. Yes.	03:32:06
11	Q. Can you point that language to me?	03:32:07
12	A. Yes. Specifically it's contained in the	03:32:10
13	section entitled "Other."	03:32:12
14	Q. Which language is that?	03:32:17
15	A. The last line of that paragraph states	03:32:20
16	clearly that National -- it says (Reading):	03:32:24
17	"Global pledges to deliver up to	03:32:29
18	National a commitment letter to finance one	03:32:30
19	or more aircraft under an operating lease."	03:32:33
20	Q. Is there any other language you would point	03:32:35
21	to in the agreement besides that language?	03:32:37
22	A. I would point to every reference within the	03:32:40
23	LOI that says operating lease, price, rent,	03:32:43
24	maintenance reserves. Every section that contains	03:32:48
25	the word "operating lease" and applies specifically	03:32:51

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1	to an operating lease is evidence that this document	03:32:54
2	does cover and does subject National Air Cargo to	03:32:57
3	lease back from us one aircraft under the terms of	03:33:01
4	an operating lease.	03:33:03
5	Q. And on the page which is GLOBAL 005087,	03:33:04
6	under the terms "Rental Rate," there is discussion	03:33:12
7	that says (Reading):	03:33:16
8	"Lessee will have the option to select	03:33:17
9	an operating lease structure or finance	03:33:19
10	lease structure."	03:33:21
11	Do you see that language?	03:33:23
12	A. Yes, I do.	03:33:23
13	Q. And do you believe that that language is	03:33:24
14	restrictive in some way? Meaning that, at least	03:33:31
15	with respect to one airplane, lessee will not have	03:33:35
16	the option to select a finance lease structure?	03:33:38
17	MR. SMITH: Form.	03:33:40
18	THE WITNESS: Yes. I believe that it is	03:33:42
19	restrictive in a way that it does require that	03:33:44
20	they -- that one of these aircraft be an operating	03:33:47
21	lease.	03:33:50
22	BY MR. RICHMOND:	03:33:56
23	Q. Outside the language -- outside the	03:33:57
24	language of the lease itself -- I am sorry. Let me	03:34:01
25	ask it a different way.	03:34:06

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1 Apart from actual language in the final 03:34:06
2 version of the letter of intent that we have just 03:34:09
3 been looking at, did anyone at National Air Cargo 03:34:12
4 ever say to you in words or effect, Jacob, we 03:34:14
5 promise you exclusivity? 03:34:19

6 A. We talked about exclusivity on a number of 03:34:24
7 occasions. Absolutely. 03:34:26

8 Q. Did anyone from National Air Cargo ever say 03:34:28
9 to you Jacob -- in words or substance or to the 03:34:31
10 effect, Jacob we promise you exclusivity? 03:34:34

11 A. I don't recall them saying those exact 03:34:37
12 words. We discussed exclusivity on a very early 03:34:41
13 stage. We knew at an early point in time that 03:34:45
14 Mr. Stukes was in contact with Deutsche Bank and DVB 03:34:48
15 and Goldman Sachs. 03:34:52

16 Q. Did National Air Cargo ever say to you, 03:34:54
17 Mr. Hodges, we are giving you exclusivity? 03:34:57

18 A. No. I don't believe that they mentioned 03:35:00
19 those words. 03:35:03

20 Q. Did National Air Cargo ever say to you any 03:35:04
21 words that were even close to that? 03:35:07

22 A. Well, to me, the weighty matter here is 03:35:11
23 what is in the LOI and what's in writing, rather 03:35:17
24 than words. I would much -- I would request that in 03:35:21
25 writing as opposed to a verbal statement. 03:35:25

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1	MR. RICHMOND: The court reporter is asking	03:35:40
2	us for a little break. His fingers are probably	03:35:42
3	wearing out. And I am very sorry that I've spoken	03:35:45
4	so quickly and for so long, so we will take a break.	03:35:48
5	THE VIDEOGRAPHER: This marks the end of	03:35:52
6	Tape Number 3 in the deposition of Jacob Hodges,	03:35:55
7	Volume I.	03:36:00
8	We are off the record. It's 3:35.	03:36:01
9	(Recess.)	03:36:05
10	THE VIDEOGRAPHER: This marks the beginning	03:50:06
11	of Tape Number 4, deposition of Jacob Hodges, Volume	03:50:08
12	I.	03:50:12
13	Back on the record at 3:50.	03:50:12
14	BY MR. RICHMOND:	03:50:14
15	Q. Mr. Hodges, apart from the language of the	03:50:16
16	final version of the letter of intent itself, did	03:50:20
17	National Air Cargo ever say to you in words or	03:50:25
18	substance or effect, Jacob, we'll give you one	03:50:29
19	operating lease, at a minimum?	03:50:33
20	A. Yes, they did.	03:50:36
21	Q. When did they say that?	03:50:37
22	A. That message was conveyed to me several	03:50:39
23	times over by Mr. Stukes.	03:50:43
24	Q. Putting Mr. Stukes to one side, did anyone	03:50:44
25	from National Air Cargo ever say to you, either in	03:50:49

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1	that first conversation or the conversations over	03:50:52
2	the weekend before the letter of intent was	03:50:53
3	finalized and executed, Jacob, we'll give you one	03:50:57
4	operating lease, at a minimum?	03:51:01
5	A. Yeah. Sure. I don't know that they used	03:51:03
6	those exact words. We talked about it on every	03:51:06
7	single conference call. The substance was the LOI	03:51:09
8	going back and forth between the markups in between	03:51:15
9	the calls. I don't know that on a call they	03:51:18
10	actually said those exact words.	03:51:21
11	Q. Did they say words even generally like	03:51:24
12	that?	03:51:30
13	A. Yeah. I would say generally they did, yes.	03:51:30
14	Q. So your testimony is that someone from	03:51:33
15	National Air Cargo used words generally to say to	03:51:38
16	you, Jacob, you can have one operating lease?	03:51:41
17	A. Yeah. When we were talking about operating	03:51:43
18	lease, finance lease on a conference call and	03:51:46
19	talking about the importance of the operating lease	03:51:49
20	language remaining in the LOI because of the fact	03:51:51
21	that we have all along to this point been interested	03:51:54
22	in the operating lease side of this transaction. We	03:51:59
23	didn't introduce the finance lease language;	03:52:02
24	National Air Cargo did. Our purpose was always the	03:52:06
25	operating lease.	03:52:08

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1 And, yes, as we were having those 03:52:09
2 conversations, it's clear that they are in agreement 03:52:11
3 with our position that we have at least one aircraft 03:52:18
4 under an operating lease. 03:52:22

5 Q. Who from National Air Cargo promised you 03:52:23
6 you could have one operating lease? 03:52:27

7 A. Well, again, I don't know that a promise 03:52:28
8 was ever verbally said to me on a call. As we are 03:52:32
9 talking about this and then as they concede to the 03:52:40
10 point and allow the language to stay in and as we 03:52:43
11 had worked with them in some level of cooperation 03:52:47
12 from going from all aircraft down to one aircraft 03:52:50
13 under an operating lease, there is some 03:52:54
14 give-and-take here. And the one aircraft is what we 03:52:56
15 settled on, that a minimum of one would be done 03:52:58
16 under an operating lease. 03:53:01

17 Q. Is there any one person at National Air 03:53:03
18 Cargo you can attribute that to; that is to say, an 03:53:06
19 agreement to give you one operating lease? 03:53:12

20 A. No, not any one. I mean, Chris Alf was 03:53:14
21 primarily the voice on all of the conference calls. 03:53:18

22 MR. RICHMOND: Let me have marked as 03:53:37
23 Exhibit 375 a document with the Bates Numbers GLOBAL 03:53:38
24 004535 and 4536. 03:53:54

25 (Deposition Exhibit 375 was marked for

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1	identification.)	03:54:19
2	BY MR. RICHMOND:	03:54:19
3	Q. Do you have Exhibit 375?	03:54:34
4	A. Yes, I do.	03:54:35
5	Q. Do you recognize that to be an E-mail you	03:54:36
6	received from Mr. Stukes --	03:54:39
7	A. Yes.	03:54:40
8	Q. -- copy Mr. Warren on July 16, 2010?	03:54:40
9	A. Yes, I do.	03:54:43
10	Q. Two days before the letter of intent was	03:54:45
11	finalized, Mr. Stukes was telling you on behalf of	03:54:49
12	National Air Cargo, they have no interest in any of	03:54:53
13	the operating leases.	03:54:55
14	Do you see that?	03:54:57
15	A. I do.	03:54:57
16	Q. They want all finance leases.	03:54:58
17	A. Okay.	03:55:00
18	Q. Then he says (Reading):	03:55:01
19	"This should be of no surprise."	03:55:02
20	Do you see that?	03:55:05
21	A. Yes.	03:55:05
22	Q. And the reason he says that is because	03:55:05
23	Mr. Stukes has told you all along that National Air	03:55:08
24	Cargo does not want operating leases; right?	03:55:12
25	MR. SMITH: Foundation.	03:55:14

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1	THE WITNESS: I believe that it references	04:15:10
2	that the decision to finance or lease, be it an	04:15:12
3	operating lease or a finance lease, is contained	04:15:18
4	within the document.	04:15:20
5	BY MR. RICHMOND:	04:15:37
6	Q. If you go to the page that is designated	04:15:38
7	the lease, which is 005091.	04:15:43
8	Do you see that?	04:15:56
9	A. Yes, I do.	04:15:56
10	Q. Earlier when I asked you whether you	04:15:59
11	thought this document was a lease, you said it	04:16:01
12	contained the foundation for a lease, but it was not	04:16:04
13	a lease itself because the lease would still have to	04:16:07
14	be created or negotiated.	04:16:10
15	Is that a fair characterization?	04:16:12
16	A. That's correct. Yes.	04:16:14
17	Q. And the bottom -- the last line of this	04:16:15
18	section says (Reading):	04:16:18
19	"The terms of the finance lease and	04:16:18
20	the operating lease will be negotiated in	04:16:20
21	good faith by the parties as soon as	04:16:22
22	practicable after execution of this LOI."	04:16:25
23	Do you see that?	04:16:28
24	A. Yes.	04:16:28
25	Q. Was there ever any attempt to do that?	04:16:29

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1 A. No. I don't think -- no, there was not an 04:16:34
2 attempt to do that at that point. 04:16:39

3 Q. Now, down on the Other section, we've 04:16:43
4 focused on the second sentence a little bit with 04:16:46
5 respect to providing an operating lease, in your 04:16:49
6 view. 04:16:53

7 But the first sentence says (Reading): 04:16:54

8 "The parties agree that Global will 04:16:55
9 use its best efforts to deliver up to 04:16:56
10 National on or before Thursday, July 22, 04:16:58
11 2010, an MOU from a qualified lender to 04:17:02
12 provide capital to purchase aircraft under 04:17:05
13 a loan and/or finance lease." 04:17:07

14 Do you see that? 04:17:10

15 A. Yes. 04:17:10

16 Q. Am I correct that that sentence was written 04:17:11
17 by you or Stuart Warren? 04:17:14

18 A. Yes. 04:17:17

19 Q. And the second sentence of the Other 04:17:17
20 provision was also written by you or Stuart Warren? 04:17:20

21 A. Yes. This sentence came -- this paragraph, 04:17:23
22 this section, was the result of a conference call 04:17:26
23 that we had prior to releasing the final version of 04:17:30
24 the LOI. 04:17:35

25 Q. But the actual sentences were drafted by 04:17:36

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1 you or Mr. Warren, not somebody at National Air
2 Cargo; right?

04:17:38

3 A. Well, this section was discussed on that
4 call. This is a resolution, if you will, between
5 two open items at that point.

04:17:45

6 Q. Whatever happened prior to the actual
7 writing, somebody had to write the sentences, and
8 that somebody was you or Mr. Warren; correct?

04:17:45

04:17:46

9 A. Correct.

04:17:49

10 Q. Prior to the -- let me ask it a different
11 way.

04:17:51

04:17:54

04:17:56

12 Over that weekend of the 16th, 17th, and
13 18th, did you have discussions with folks at
14 National Air Cargo about whether you would actually
15 by Thursday, July 22, be able to get a letter from a
16 bank providing some sort of a commitment to finance
17 the purchase of one or more of these 747s?

04:18:08

04:18:15

04:18:18

04:18:22

04:18:26

04:18:30

04:18:33

18 A. I believe the substance of those
19 conversations happened after signing the LOI.

04:18:38

04:18:40

20 Q. And were there any conversations prior to
21 the signing of the LOI in which National Air Cargo
22 said to you in words or substance, We have to have a
23 commitment letter from a bank by July 22, 2010, or
24 we just won't be able to buy those Japan Airlines
25 airplanes due to the bankruptcy?

04:18:44

04:18:48

04:18:52

04:18:57

04:19:02

04:19:09

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1	A. No. No.	04:19:10
2	Q. Did you commit to National Air Cargo that	04:19:10
3	you could get such a letter by July 22?	04:19:12
4	A. No.	04:19:15
5	Q. Did you even discuss it with National Air	04:19:16
6	Cargo?	04:19:20
7	A. A commit- -- no, not a commitment letter.	04:19:20
8	We had no discussion about obtaining a commitment	04:19:23
9	letter by the 22nd.	04:19:27
10	Q. Did you discuss getting any kind of a	04:19:28
11	letter or writing or memorandum or anything else	04:19:30
12	from a bank by July 22?	04:19:33
13	A. Yes.	04:19:36
14	Q. And what was that discussion?	04:19:36
15	A. It was centered around us assisting	04:19:39
16	National Air Cargo with providing some- -- something	04:19:45
17	that they could show to JAL to demonstrate that they	04:19:48
18	were moving forward with purchasing and financing	04:19:53
19	these aircraft.	04:19:56
20	Q. And what was your understanding as to what	04:19:56
21	the something was that you needed to try to get by	04:19:58
22	July 22?	04:20:01
23	A. Well, I wasn't clear. I wasn't certain as	04:20:04
24	to what that was. Mr. Alf and Mr. Joerger were not	04:20:06
25	clear on conveying that to us, what that something	04:20:10

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1	was.	04:20:13
2	Q. Did you think it was a memorandum of	04:20:18
3	understanding from a qualified lender to provide	04:20:22
4	capital?	04:20:25
5	A. Yes. At one point I thought that that	04:20:26
6	might be what they would utilize to show to JAL.	04:20:29
7	Q. And did you tell the folks at National Air	04:20:32
8	Cargo that you could indeed by Thursday, July 22,	04:20:35
9	2010, obtain such an MOU?	04:20:38
10	A. No. We always said that we would use our	04:20:41
11	best efforts to obtain a letter, an MOU, a soft	04:20:45
12	commitment by that date.	04:20:51
13	Q. Let's assume you used your very best	04:20:54
14	efforts for the five days between July 18 and	04:20:56
15	July 22, but in spite of working really hard at it,	04:20:59
16	you didn't get an MOU on that date. Then what?	04:21:04
17	MR. SMITH: Form. Foundation.	04:21:09
18	What's the question?	04:21:12
19	THE WITNESS: Nothing happened. Nothing	04:21:14
20	happens at that point. We continued. I continued.	04:21:17
21	Business as usual. The 22nd, the 23rd. Continued	04:21:19
22	to call banks. Continued to send E-mails.	04:21:23
23	Continued to work with my team. My team continued	04:21:26
24	to work with National Air Cargo. Nothing happened.	04:21:29
25	There was no deadline, no termination date.	04:21:32

JACOB S. HODGES - 5/31/2012

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1 BY MR. RICHMOND:

04:21:36

2 Q. Did you know that National Air Cargo had a
3 meeting with the bankruptcy trustee in Japan early
4 the next week after Thursday, July 22?

04:21:36

04:21:41

04:21:44

5 A. I believe that during that week of -- after
6 signing the LOI, they had made reference to us that
7 they were meeting with the bankruptcy trustee, yes.

04:21:47

04:21:50

04:21:53

8 Q. And did they not tell you that if they
9 didn't get off that airplane -- let me say it a
10 different way.

04:21:56

04:21:58

11 You understood, didn't you, before you
12 signed that letter of intent, that the folks from
13 National Air Cargo had to get off the plane in Tokyo
14 early in the week after July 22 with a letter or a
15 memo or something from a bank committing to provide
16 money to buy those five airplanes or they would not
17 be able to buy those five airplanes?

04:22:05

04:22:09

04:22:13

04:22:19

04:22:22

04:22:26

04:22:28

18 A. No, I did not understand that.

04:22:30

19 Q. No one ever told you that?

04:22:31

20 A. I don't know that I knew of the meeting in
21 Tokyo until after the LOI was signed.

04:22:32

04:22:34

22 Q. And what length of time was going to be
23 available to you if you did not produce a memorandum
24 of understanding by July 22, to provide -- to find
25 such a thing or to finish the financing or to do

04:22:38

04:22:42

04:22:45

04:22:50

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1	anything?	04:22:54
2	MR. SMITH: Form and foundation.	04:22:54
3	THE WITNESS: All along we had talked to	04:22:55
4	National Air Cargo about this being a 30- to 60-day	04:22:58
5	process. In fact, it says so much in the LOI. It	04:23:02
6	says it's 60 days prior to the lease commencement	04:23:05
7	that the lessee will select an aircraft as a finance	04:23:09
8	lease or an operating lease.	04:23:13
9	This is consistent with past E-mails that I	04:23:14
10	had shared with Mr. Stukes, Mr. Alf, past	04:23:16
11	conversation that I'd shared with him about the	04:23:19
12	complexity about even obtaining a commitment letter	04:23:24
13	or a proposal or an MOU from a lender at this point	04:23:29
14	in time.	04:23:35
15	BY MR. RICHMOND:	04:23:37
16	Q. You know why July 22, 2010, was even put in	04:23:37
17	the document as a date?	04:23:42
18	A. No, I don't.	04:23:43
19	Q. Just a random date out of thin air?	04:23:44
20	A. I think that they wanted to be able to show	04:23:48
21	progress, and they chose that date. I don't know	04:23:52
22	why.	04:23:55
23	Q. And at the end of the five days, on	04:23:56
24	July 22, 2010, what did you think you were supposed	04:23:59
25	to produce in the terms of a deliverable back to	04:24:03

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1	Q.	Do you know what that refers to?	05:47:44
2	A.	I believe that I am writing down what	05:47:46
3		Mr. Stukes is telling to me on the phone.	05:47:50
4	Q.	And do you remember now if he meant	05:47:54
5		Thursday and Friday of that week, meaning the day	05:47:59
6		before July 22 and this very day, July 23?	05:48:01
7	A.	Yes. That's what I believe that I was	05:48:05
8		writing at the time.	05:48:06
9	Q.	Then the next bullet point says (Reading):	05:48:07
10		"Got to save the deal."	05:48:09
11		Do you know what that referred to?	05:48:10
12	A.	As I look at it right now, I suspect that	05:48:12
13		it was in reference to the JAL deal.	05:48:15
14	Q.	So that's not your note to yourself, "Got	05:48:18
15		to save the deal." That's a reflection of National	05:48:23
16		Air Cargo trying to save the Japan Airlines deal, as	05:48:28
17		best as you remember?	05:48:32
18	A.	Best I can remember, that's what I am	05:48:33
19		interpreting Mr. Stukes to be telling me the reason	05:48:36
20		for terminating the agreement.	05:48:39
21	Q.	Then down at the bottom there is an	05:48:40
22		asterisk. It says, "GS would."	05:48:42
23		I takes it GS stands for Goldman Sachs?	05:48:46
24	A.	Right.	05:48:50
25	Q.	And then it looks like maybe you didn't	05:48:51

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1	finish that thought and started a new one. It said	05:48:54
2	(Reading):	
3	"Looks as if this was done	05:48:56
4	intentionally. Ask."	05:48:58
5	Do you know what that refers to?	05:49:00
6	A. Well, the former question, the asterisk "GS	05:49:08
7	would," I don't know how to finish that beginning of	05:49:12
8	a sentence. I don't know what I was about to write	05:49:14
9	their.	05:49:20
10	"Looks as if this was done intentionally,"	05:49:20
11	that -- I am speculating, but I'm perhaps writing my	05:49:25
12	own thoughts at that point in time as thinking that	05:49:29
13	maybe they used us to go out and prime the market,	05:49:33
14	to go out there and get the National Air Cargo name	05:49:37
15	and credit out in front of all of our banks, who, up	05:49:40
16	to this point, the majority of which had never heard	05:49:43
17	of National Air Cargo.	05:49:46
18	Q. In terms of priming the market, Goldman	05:49:51
19	Sachs doesn't need you to prime the market to raise	05:49:57
20	financing, does it?	05:50:00
21	A. No.	05:50:01
22	Q. I asked you a little while ago which	05:50:20
23	institutions you thought were the ones you were	05:50:25
24	going to focus on as of -- I think it was July 22.	05:50:27
25	And you named a bunch of names. To be honest, it	05:50:32

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1 sort of took me by surprise because they were not
2 the names that were listed in your disclosures or
3 your interrogatories or really anywhere else. I
4 thought you were going to say Perot, Citibank,
5 Guggenheim, and maybe ITC.

6 But can you tell me again, to the best of
7 your memory, who were the institutions as of July 22
8 you thought you were the closest to getting some
9 financing lined up with?

10 MR. SMITH: Asked and answered.

11 THE WITNESS: I think I did mention
12 Guggenheim.

13 BY MR. RICHMOND:

14 Q. You did.

15 A. And I think I did mention Perot.

16 Q. Okay. I will put down Guggenheim and
17 Perot.

18 Were there others?

19 A. Yes. ITC, Mr. Tomoo Nakayama.

20 Q. Were there others?

21 A. Yes.

22 Q. I had Citibank in my little stack here.

23 A. Yes. Absolutely Citibank. David Silvers
24 with Citibank.

25 Q. Any others besides those four?

05:50:35
05:50:38
05:50:41
05:50:43
05:50:47

05:50:49
05:50:51
05:50:54
05:50:58

05:50:59
05:51:01
05:51:03
05:51:04

05:51:04
05:51:08
05:51:10

05:51:11
05:51:12
05:51:18
05:51:20
05:51:21
05:51:24
05:51:28
05:51:29

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1 DECLARATION

2

3

4

5 I hereby declare I am the deponent in the
6 within matter; that I have read the foregoing
7 deposition and know the contents thereof; and I
8 declare that the same is true of my knowledge except
9 as to the matters which are therein stated upon my
0 information or belief, and as to those matters, I
1 believe it to be true.

12 I declare under the penalties of perjury
13 under the law of the State of California that the
14 foregoing is true and correct.

15 This declaration is executed this _____
16 day of _____, 20_____, at
17 _____, California.

18

19

20

21

22

23

24

25

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1 STATE OF CALIFORNIA)

2) ss.

3 COUNTY OF LOS ANGELES)

4

5 I, Xavier Mireles, CSR No. 5001 in and for the State
6 of California, do hereby certify:

7 That, prior to being examined, the witness named in
8 the foregoing deposition was by me placed under oath to
9 testify to the truth, the whole truth, and nothing but
10 the truth;

11 That said deposition was recorded stenographically
12 by me at the time and place therein named and thereafter
13 transcribed, and the same is a true, correct, and
14 complete transcript of said proceedings.

15 Before completion of the deposition, review of the
16 transcript [] was [X] was not requested. If requested,
17 any changes made by the deponent (and provided to the
18 reporter) during the period allowed are appended hereto.

19 I further certify that I am not interested in the
20 event of this action.

21 WITNESS MY HAND this 12th day of June, 2012.

22

23

24

25 XAVIER MIRELES, CSR No. 5001

EXHIBIT 3

**FILED UNDER SEAL PURSUANT TO
PROTECTIVE ORDER**

EXHIBIT 4

**FILED UNDER SEAL PURSUANT TO
PROTECTIVE ORDER**

EXHIBIT 5

From: Jacob Hodges
To: Brian Hollnagel; Gunnar Sachs; Jan Soderberg
CC: jfry@rothgerber.com
Sent: 7/28/2010 10:07:01 PM
Subject: Re: FW: Employment Agreement _PEARL

Brian / All,

Regretfully, the attached employment agreement and shareholder agreement fall short of my expectations, and ambitions at this stage in my career. I was hopeful, and felt deserving of, seeing something more equitable and reasonable given my strong track record of consistently overachieving at BCI, the considerable amount of time I have worked on getting the company to this stage, and the full responsibility that I would carry going forward.

I do not intend to make any change requests or mark up the agreement in any way. Overall I find it offensive and written more in the form of a termination agreement rather than an employment agreement. The goals are aggressive, perhaps unobtainable for a company that has to date one employee. The salary and bonus structure is below market standards and the equity vesting period is inappropriate given that of the shareholders I would be the only one with industry experience. The exclusivity section requiring that I render 100% of my time and services to the company is unacceptable given that the other shareholders are not making similar commitments of time and talents to the company, and to lock myself in with an unproven start up company for a term of 5 years is not a reasonable request. Further more the company was originally conceived to be an entity that would not be affiliated with BCI yet the news coming out of Farnborough last week suggests otherwise. I could continue with additional concerns and comments but will refrain. Again, I regret that you do not see the value that I add to the company, or feel that I am deserving of the proper reward and recognition.

I do wish you well with this new and exciting venture.

Best Regards,

--
Jacob Hodges
Phone: 805-405-9211
Email: hodges.jacob@gmail.com

From: Fry, Joel [jfry@rothgerber.com]
Sent: Thursday, July 15, 2010 1:28 PM
To: Jacob Hodges
Cc: Brian Hollnagel; gunnar@sachsaspen.com; jansoderberg@comcast.net; 'Owen Jones'
Subject: Employment Agreement

Jacob:

Attached is a draft of your Employment Agreement with Pearl Aircraft Corporation Ltd. I have also attached a draft letter agreement re your right to become a lender/shareholder, along with the form of Loan Agreement referenced in the letter agreement.

Please note that Pearl has not reviewed the attached documents. Therefore, the attached drafts remain subject to Pearl's comments.

Please let me know if you have any questions or comments.

Thanks,

Exhibit No.:	502
Deponent:	Lamig
Date/RPR:	6/8/12
Hunter & Geist, Inc. 92	

GLOBAL 000955

Joel

Joel C. Fry, Attorney-at-Law

Rothgerber Johnson & Lyons LLP | One Tabor Center, Suite 3000 |
1200 Seventeenth Street | Denver, CO 80202 |
Direct 303.628.9547 | Main 303.623.9000 | Fax 303.623.9222
E-mail: jfry@rothgerber.com | Website: www.rothgerber.com

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EXHIBIT 6

1
2 UNITED STATES DISTRICT COURT
3 CENTRAL DISTRICT OF CALIFORNIA
4 WESTERN DIVISION

-----X
5 GLOBAL BTG LLC, a Nevada limited liability
company with a principal place of business
in California,

6 PLAINTIFF,

7 -against- Index No.:
8 2:11-cv-01657-RSWL-JCG

9 NATIONAL AIR CARGO, INC., a New York
corporation registered to do business in
California,

10 DEFENDANT.

11 -----X
12 NATIONAL AIR CARGO, INC.,

13 COUNTERCLAIM PLAINTIFF,

14 -against-

15 GLOBAL BTG LLC, JACOB HODGES and DOES 1-5,

16 COUNTERCLAIM DEFENDANTS.
-----X

17 DATE: May 18, 2012

18 TIME: 9:03 A.M.

19

20

21

22

23

24

25

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1 D. STUKES

2 timelines they had to hit to do whatever
3 they represented to whoever they were
4 buying the aircraft from.

5 Q. And do you know if you provided
6 them with what Mr. Alf is asking for by the
7 Thursday date that's listed there?

8 A. No. Obviously, we were unable
9 to provide them with anything of that
10 nature by that date.

11 Q. And why is that?

12 A. We were still going through the
13 process, which we had already started.

14 Q. And 14 days is not enough to
15 get --

16 A. No.

17 Q. -- even a commitment?

18 A. No, not for \$200 million.

19 Q. Even the softest of the four
20 different types of agreements we talked
21 about?

22 A. Well, softest would have been a
23 possibility of a letter, expression of
24 interest letter. Could have been a
25 possibility.

1 D. STUKES

2 Q. And do you know now if that
3 would be satisfied Mr. Alf?

4 A. I have no idea. Couldn't
5 answer that.

6 MR. SMITH: This is another
7 6/19. We will label this as 31.

8 (Whereupon, the aforementioned
9 document was marked as Exhibit 31 for
10 identification as of this date by the
11 Reporter.)

12 Q. I want to take a look at the
13 actual update, which begins on page
14 NAC-006514.

15 A. Okay.

16 Q. The Goldman Sachs paragraph,
17 LIBOR, that is also referred to as the swap
18 rate?

19 A. Yes, mm-hmm.

20 Q. And do you know what it was
21 running around this time?

22 A. I don't. I couldn't tell you
23 that.

24 Q. If I said 19, would that
25 surprise you?

1 D. STUKES

2 A. No.

3 Q. You look at LIBOR plus four or
4 five here. What does that mean to you in
5 terms of actual interest rate?

6 A. It means exactly, whatever the
7 LIBOR was plus four or five would have been
8 the interest rate. So, if you say around
9 that time it was hovering around
10 two percent, then the interest rate would
11 have been around six or seven percent.

12 Q. Did you tell Mr. Hodges when
13 you first contacted -- well, you first
14 contacted Jacob, said, "You are a free
15 agent. If you are a free agent, get in
16 touch with me." He got in touch with you.
17 Eventually, you got on the phone together
18 within a couple of days probably?

19 A. Probably, yeah.

20 Q. Did you tell him that you were
21 reaching out to Goldman Sachs at that time?

22 A. I am sure that I did. I would
23 be surprised if I didn't. I assume that I
24 did, and that we were going through a
25 process talking to a number of people. As

1 D. STUKES

2 a matter of fact, I know I did.

3 Q. Goldman specifically?

4 A. I would be surprised if I
5 didn't.

6 Q. I mean, you just said "going
7 through a process talking to people." You
8 know you said that to him?

9 A. Mm-hmm.

10 Q. And, I'm sorry. Go ahead?

11 A. No, I am sure he would have
12 asked, "Who are you talking to?" And I
13 said, "Hey, we are talking to these
14 parties" and da-da-da. I would be
15 surprised if we didn't have that dialogue.

16 Q. Same question for DTP
17 Transport?

18 A. I don't know. I can't, at this
19 point, say which, today, which ones we
20 specifically told them we were talking to.
21 I don't have the ability to answer that.

22 Q. And same question for CIT.
23 Same answer?

24 A. Same answer.

25 Q. Same question for Guggenheim

1 D. STUKES

2 Capital?

3 A. Same answer.

4 Q. Same question for Nord LB?

5 A. Same answer.

6 Q. Are you going to give me the
7 same answer for -- well, let's do it with
8 Citibank. Same question?

9 A. Same answer.

10 Q. Credit Agricole?

11 A. Agricole, yup, mm-hmm.

12 Q. Comvest?

13 A. Comvest, same thing.

14 Q. Bayside, same question; same
15 answer?

16 A. Mm-hmm.

17 Q. Pearl Aviation?

18 A. Mm-hmm.

19 Q. Do you remember when you first
20 heard of Pearl Aviation?

21 A. From Brian Hollnagel.

22 Q. And can you place a time on
23 when that would have been?

24 A. That's probably around when we
25 were doing Unit Pool, because he was

1 D. STUKES

2 talking about doing the transaction via
3 Pearl.

4 Q. What did you understand Pearl
5 to be?

6 A. I knew Pearl. Pearl was
7 basically a financing arm that was going to
8 be getting into aviation that had two
9 fairly deep pockets as boys out in Denver,
10 and they were aggressively trying to do
11 deals.

12 Q. And was Pearl doing different,
13 in a different type of business than BCI?

14 MR. RICHMOND: Objection to the
15 extent it calls for him to speculate.

16 A. Well, Pearl was basically going
17 to be doing the same thing BCI did under
18 new entity, but Brian Hollnagel was
19 purportedly not supposed to have anything
20 to doing with Pearl. He was, as I
21 understood, consulting them, but was not a
22 principal or anything in Pearl.

23 Q. Who were the two managing
24 directors that you were talking with, if
25 you remember?

1 D. STUKES

2 A. The two foreign guys. I can't
3 remember their names. One is from -- the
4 two principals. It would be the two
5 principals.

6 Q. Craig Papayanis, was he one of
7 those people?

8 A. I don't know if I was talking
9 to Craig. He is not part of Pearl. I
10 don't think if we were talking to Craig
11 about that.

12 Q. Was Jacob Hodges one of these
13 two people you were referring to here?

14 A. Potentially could have been.
15 Jake and I could have had a conversation
16 about Pearl, but I don't think he was
17 associated that much with Pearl either, or
18 with Brian.

19 Q. If fact, you thought that he
20 was a free agent at this time?

21 A. That is correct.

22 Q. So, I mean, I guess I am trying
23 to understand, is this a reference to
24 Jacob's deal or is this a reference to a
25 contact with a different company?

1 D. STUKES

2 A. No, I think we actually had
3 some level of discussion with Pearl; I am
4 not sure how. But, that's the best I can
5 answer that.

6 Q. So, it is not a reference to
7 Jacob's deal, as far as you know?

8 A. No, I don't think it is.

9 Q. And do you recall if you told
10 Jacob that you were in discussions with
11 Pearl Aviation?

12 A. No, don't recollect.

13 Q. The next page you rank the
14 candidates?

15 A. Yup. I did a lot of work on
16 this here.

17 Q. We are just getting started on
18 the amount of the work you did.

19 I want to look actually the
20 page after that, Pearl Aviation, "Strategy,
21 use the LOIs as backup." Why is it that --
22 and I guess that's the same, similar
23 strategy comment under "Guggenheim." Do
24 you see that?

25 A. Okay, mm-hmm.

1 D. STUKES

2 Q. Why is it that you proposed to
3 use the LOIs discussed in the Pearl
4 Aviation section as backup?

5 A. (Perusing.) "Backup"? I am
6 trying to think of what the philosophy was
7 (perusing). Maybe, you know, I guess to --
8 if they were pressing for something as far
9 as a hard LOI, if these guys were willing
10 to do some type of hard LOI, we potentially
11 would consider doing it.

12 Q. And Pearl is proposing -- the
13 Pearl issue you discuss are operating
14 leases, correct?

15 A. Yes, yeah.

16 Q. And that was not a preferred
17 options for National Air Cargo, to your
18 understanding?

19 A. No, no, it was not.

20 Q. Same question with Guggenheim.
21 They are proposing operating leasing?

22 A. Yeah, they definitely were
23 interested in doing operating leases, and
24 actually submitted, as I recall, something
25 in writing to us, as I recall, as far as

1 D. STUKES

2 Q. This one, I want to look at the
3 bottom e-mail on the first page, which
4 extends to the second one, second page.

5 A. Okay, okay.

6 Q. Is he talking about using
7 SkyWorks to do the same thing that you did?

8 A. Potentially, yeah.

9 Q. And I take the tone of, when
10 you say, "What more can I do?" In your
11 response, which is the top here, your tone,
12 you are trying to -- what are you trying to
13 tell him?

14 A. We have done all that we were
15 supposed to do, and I don't see what
16 SkyWorks could do anything different,
17 particularly coming in on June 20th trying
18 to do something.

19 Q. I mean, this looks like you
20 were frustrated that they were trying to
21 pull somebody else into the deal?

22 A. I mean, you understand my
23 position. You see the work that we were
24 doing and all of the sudden someone comes
25 out of the blue and says, "Hey, why don't

1 D. STUKES

2 you start working with SkyWorks?" It kind
3 of gets in the back of your hair for a
4 little while there.

5 Q. And SkyWorks gets to use the
6 growth plan if they want to?

7 A. The whole nine yards.

8 Q. Do you know if they ever
9 engaged SkyWorks?

10 A. No, to my knowledge, they
11 didn't.

12 MR. SMITH: This will be 36,
13 please.

14 (Whereupon, the aforementioned
15 document was marked as Exhibit 36 for
16 identification as of this date by the
17 Reporter.)

18 Q. Do you have any specific
19 recollection of Jacob Hodges telling you he
20 was with Pearl Aviation before you sent
21 this e-mail?

22 A. No.

23 Q. But this, where you say, "Pearl
24 Aviation is moving fast" in this e-mail,
25 that's a reference to Jacob Hodges, right?

1 D. STUKES

2 A. Yeah, this one, yeah.

3 MR. SMITH: 37.

4 (Whereupon, the aforementioned
5 document was marked as Exhibit 37 for
6 identification as of this date by the
7 Reporter.)

8 Q. This is a June 21st e-mail from
9 you to Paul Sawhny and other, and then some
10 National people?

11 A. Mm-hmm.

12 Q. "E" in this references Pearl
13 Aviation. Do you know if this is a
14 reference to Mr. Hodges?

15 A. It definitely is.

16 Q. And this doesn't reference the
17 type of financing or leasing that Pearl
18 Aviation was contemplating. Do you know
19 what they were thinking about doing at this
20 time?

21 A. Capital lease.

22 Q. And is there a reason that you
23 didn't say to capital lease is the plan?

24 A. Well, I don't think if you look
25 at it at all, I don't go through any of

1 D. STUKES

2 these and say, "What is the form?" Or
3 whatever. I just gave people an update on
4 what was going on.

5 MR. SMITH: 38.

6 (Whereupon, the aforementioned
7 document was marked as Exhibit 38 for
8 identification as of this date by the
9 Reporter.)

10 Q. We saw the bottom of this first
11 page where it says, "Don, we need to talk
12 on Monday and discuss specifics. I don't
13 want to make promises." And then, this
14 appears to be your response to that. It
15 looks like early Monday morning?

16 A. Right.

17 Q. (Reading): "Your process is
18 consistent with my understanding." So,
19 effectively, you are saying to Mr. Hodges I
20 understand that you cannot get --

21 A. Financing in the time period
22 that was needed.

23 Q. What about draft LOIs by Monday
24 or Tuesday morning?

25 A. No, that's my understanding of

1 D. STUKES

2 C E R T I F I C A T E

3 STATE OF NEW YORK)
4 : SS.:
5 COUNTY OF NEW YORK)

6 I, JOSHUA B. EDWARDS, RPR, a Notary
7 Public for and within the State of New
8 York, do hereby certify:

9 That the witness whose examination is
10 hereinbefore set forth was duly sworn and
11 that such examination is a true record of
12 the testimony given by that witness.

13 I further certify that I am not
14 related to any of the parties to this
15 action by blood or by marriage and that I
16 am in no way interested in the outcome of
17 this matter.

18 IN WITNESS WHEREOF, I have hereunto
19 set my hand this 25th day of May 2012.

20

21

Joshua B. Edwards

22 _____
23 JOSHUA B. EDWARDS, RPR

24

25

EXHIBIT 7

Re: NAC Aircraft Purchases

<http://mail.aol.com/36049-11/aol-6/en-us/mail/PrintMessage.aspx>

From: Jacob Hodges <hodges.jacob@gmail.com>
To: dstukes <dstukes@asi-advisors.com>
Subject: Re: NAC Aircraft Purchases
Date: Sun, Jun 20, 2010 11:54 pm

Don,

We need to talk on Monday and discuss specifics. I don't want to make any promises that we won't be able to deliver on. For example, it is not possible for us to close with our funds given the timing you outlined below. Our equity will be coupled with bank debt that we will raise in the capital markets. Ideally in a scenario such as this, the airline would close with their own money and take delivery of the aircraft. All the while they will be negotiating the terms of the lease and sale and lease back (SLB) with us, the potential lessor. Once agreed we then have a certain time in which to perform and consummate the SLB. We remain interested in the opportunity and will certainly be able to get an LOI out early this week.

Best,

Jacob Hodges

On Sun, Jun 20, 2010 at 3:20 AM, <dstukes@asi-advisors.com> wrote:

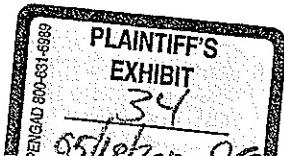
: Jacob:
:
: There are three immediate deliveries. One on this week; one July 10th and one on July 30th. Can you team
structure a deal for these aircraft this week. I know this is on a fire drill basis. At a min. Can you do the
two deliveries this week and July 10th? I can get you all the information you need on Monday morning.
Can you send me draft LOI's late Monday or Tuesday morning?

What is the company name you are doing this deal, so I can send you a NDA? We have a virtual data site
with audited financials, detailed projections, LOI's and purchase agreements, Bios, contracts, etc.

Sincerely,

Donald A. Stukes
Senior Managing Director
ASI Advisors, LLC
445 Hamilton Avenue, Suite 1102
White Plains, New York 10601
Tel-(914)-358-0032
Fax-(914)-358-0033
Cell-(914)-715-1548

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Re: NAC Aircraft Purchases

<http://mail.aol.com/36049-111/aol-6/en-us/mail/PrintMessage.aspx>

On Sat 19/06/10 7:06 AM , dstukes@asi-advisors.com sent:

Jacob:

Please give me a call over the weekend, if you can, the latest Monday morning. Need to discuss NAC. Attached please find a deck that should help you better understand who NAC is and how they will deploy the aircraft. I need to talk to you about two options:

Option#1:

Sale-leaseback on three aircraft due for immediate delivery:

B747-400BCF S/N-25328, B747-400BCF-S/N-26344, and B747-400BCF S/N-25630 (must act fast!)
Term 5-7 years

Option#2:

All five JAL B747-400 BCF's (would need a firm LOI this week).

In both cases, I need to know how quickly you can actually move to affect a transaction.

Sincerely,

Donald A. Stukes
Senior Managing Director
ASI Advisors, LLC
445 Hamilton Avenue, Suite 1102
White Plains, New York 10601
Tel-(914)-358-0032
Fax-(914)-358-0033
Cell-(914)-715-1548

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On Fri 18/06/10 1:07 AM , Jacob Hodges hodges.jacob@gmail.com sent:

Don,

That is an impressive fleet by any airlines standard. I'll call you tomorrow to discuss.

Jacob

Re: NAC Aircraft Purchases

<http://mail.aol.com/36049-111/aol-6/en-us/mail/PrintMessage.aspx>

On Thu, Jun 17, 2010 at 9:22 AM, <dstukes@asi-advisors.com> wrote:

Jacob:

Attached please find a list of aircraft to be purchased by National Air Cargo. They have LOI's on all aircraft. I would like your thoughts and input. Deliveries start ASAP, so time is of the essence. Please give me a call to discuss.

Sincerely,

Donald A. Stukes
Senior Managing Director
ASI Advisors, LLC
445 Hamilton Avenue, Suite 1102
White Plains, New York 10601
Tel-(914)-358-0032
Fax-(914)-358-0033
Cell-(914)-715-1548

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On Tue 15/06/10 1:24 PM , Jacob Hodges hodges.jacob@gmail.com sent:

Don,

For the time being please only send email correspondence to my personal Gmail account.

Best,

--
Jacob Hodges
Office: +1 805-374-1235
Mobile: +1 805-405-9211
Email: hodges.jacob@gmail.com

--
Jacob Hodges
Office: +1 805-374-1235
Mobile: +1 805-405-9211
Email: hodges.jacob@gmail.com

Re: NAC Aircraft Purchases

<http://mail.aol.com/36049-111/aol-6/en-us/mail/PrintMessage.aspx>

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Jacob Hodges
Office: +1 805-374-1235
Mobile: +1 805-405-9211
Email: hodges.jacob@gmail.com

EXHIBIT 8

**FILED UNDER SEAL PURSUANT TO
PROTECTIVE ORDER**